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BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICAN FREIGHT CAR
ASSOCIATION,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42119

ENTERED
Office of Proceedings

FEB 03 2012

Part of
Public Record

REPLY ARGUMENT AND EVIDENCE OF
UNION PACIFIC RAILROAD COMPANY

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Railroad Company*

February 3, 2012

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COUNSEL’S EXHIBITS

VERIFIED STATEMENT OF WAYNE L. RONCI

VERIFIED STATEMENT OF MARK S. BARNUM

)	
NORTH AMERICAN FREIGHT CAR)	
ASSOCIATION,)	
)	
Complainant,)	Docket No. 42119
)	
v.)	
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UNION PACIFIC RAILROAD COMPANY,)	
)	
Defendant.)	
)	

Union Pacific Railroad Company (“UP”) hereby submits its reply argument and evidence regarding the reasonableness of its tariff rule requiring a shipper or receiver releasing a loaded or empty railcar for movement on UP’s lines to remove lading residue from the railcar’s exterior and ensure that the railcar is properly secured to prevent leakage during rail movement. The tariff provision is contained in Item 200-B of UP Tariff 6004-C.¹ Under Item 200-B, if UP discovers that a railcar is in an unsafe condition due to the failure to remove lading residue or to

Item 200-B uses the term “lading residue” to refer to the product the shipper is shipping or the receiver has received that ends up on the exterior of a railcar because it either leaks out of the railcar or does not make it into the car because it is spilled or otherwise mishandled during loading or unloading. This filing uses the terms “lading residue” and “product residue” interchangeably.

secure the car properly, UP may reject the car or set it out for cleaning, depending on where the unsafe condition is discovered, and assess the party that released the car a \$650.00 surcharge.

The Board should dismiss the complaint filed by North American Freight Car Association (“NAFCA”). NAFCA alleged that Item 200-B violates statutory requirements that railroad practices must be “reasonable.” (First Am. Compl., pp. 8-9, citing 49 U.S.C. §§ 10702 & 11121.)² However, NAFCA has not carried its burden of proof. To the contrary, as shown below and in UP’s evidence, Item 200-B reasonably requires the parties responsible for loading and unloading a railcar to keep the car’s exterior free from unsafe conditions arising from the spillage or leakage of their products directly on the railcar, or in the area in which the car is loaded or unloaded. and it reasonably provides incentives to ensure that they uphold their responsibility. The provision furthers both safety and efficiency.

I. SUMMARY OF EVIDENCE AND ARGUMENT

UP’s evidence shows that product residue on car wheels and safety appliances can lead to injuries to railroad personnel and others, as well as damage to the property of the railroad and other customers. In addition, removing a contaminated car from service until it is suitable for safe movement disrupts operations and service to other customers. Item 200-B makes clear that responsibility for removing unsafe lading residue from the exterior of cars, whenever it is detected, remains on the party that controlled the loading or unloading process.

Contrary to NAFCA’s claims, Item 200-B does not absolve UP of liability for its own negligence or impose absolute liability on a shipper for accidents caused by product residue

² NAFCA also alleged that Item 200-B violates UP’s common carrier duties under 49 U.S.C. § 11101. (*Id.*, p. 9.) However, NAFCA’s opening statement does not contain any arguments regarding § 11101; it mentions § 11101 only when reciting the allegations in the complaint. (NAFCA Op. at 2.) NAFCA has therefore waived any claims regarding § 11101.

on the exterior of a railcar. Nor does it alter UP's own responsibility to inspect railcars for unsafe conditions. Rather, Item 200-B helps prevent accidents from occurring by providing an incentive for both shippers and receivers – the parties whose activities result in the presence of lading residue on cars and who are in the best position to ensure that leaking cars and cars with exterior product residue are not released for rail transportation – to work cooperatively with UP to identify and remedy the source of product residue problems. Item 200-B does not shift UP's responsibility for providing safe transportation; it supplements UP's safety efforts by requiring shippers and receivers to do their part.

NAFCA's objections to Item 200-B generally reflect misunderstandings of the provision's meaning and application. As UP's evidence shows, UP's application of Item 200-B has not produced any actual controversy. The vast majority of shippers and receivers recognize their responsibility for the safe loading and unloading of railcars, and they accept responsibility for cleaning their cars when they have been stopped for cleaning under the provision. Moreover, UP has never yet assessed a surcharge under Item 200-B, because customers have demonstrated a willingness to work with UP to resolve problems when they occur.³ In fact, UP has spent its own money sending railroad personnel to its customers' loading and unloading facilities to help identify problems and avoid future issues. UP's motivation for the provision is not to collect money for violations; UP's motivation is to avoid accidents by identifying and helping to correct problems in the loading and unloading process. However, UP believes the existence of the surcharge creates a meaningful incentive for customers to devote their own resources to addressing loading or unloading issues.

³ UP also never imposed a surcharge under Item 200 or Item 200-A, the predecessor provisions to Item 200-B.

UP's argument and evidence show that Item 200-B addresses real concerns associated with loading and unloading railcars and represents a reasonable response to these concerns. Section II of the argument describes the background of this proceeding and the specific terms of Item 200-B. Section III discusses UP's reasons for establishing Item 200-B. Section IV describes how UP has applied the provision. Finally, Section V addresses NAFCA's specific complaints about Item 200-B. UP shows that NAFCA has not demonstrated that Item 200-B is unreasonable in light of the control shippers and receivers have over the loading and unloading process and the wide latitude railroads have to impose rules related to safe loading practices.

In support of its argument, UP is submitting verified statements from Wayne L. Ronci, UP's Director, Damage Prevention Field Services ("Ronci V.S."), and Mark S. Barnum, UP's Senior Director of Operating Practices and Rules ("Barnum V.S."). UP is also submitting certain documents as Counsel's Exhibits.

II. BACKGROUND

A. Origins of Item 200-B

The terms of Item 200-B reflect an attempt by UP to accommodate concerns that NAFCA raised regarding an earlier version of UP's rule requiring shippers and receivers to remove lading residue from the exterior of railcars, which was designated as Item 200-A of Tariff 6004-C.⁴ UP issued Item 200-A on October 22, 2008.⁵

⁴ The origins of Item 200-B are described in Mr. Ronci's verified statement.

⁵ Item 200-A is attached hereto as Counsel's Exhibit B. Item 200-A took effect on November 1, 2008. Item 200, which preceded Item 200-A, was issued on September 29, 2008, with an effective date of November 1, 2008, and never actually became effective.

Item 200-A was similar to the current provision in most respects, but it included certain terms that appeared to cause special concerns to NAFCA, which filed its initial complaint in this case on April 15, 2010. NAFCA's most significant concern appeared to be that Item 200-A included an indemnity provision that required a shipper or a receiver to "indemnify and hold harmless the carrier from all costs associated with any spill, release, response, mitigation, clean up and ultimate disposal resulting from failure to comply with this item." Counsel's Ex. B, Item 200-A.1. NAFCA also objected to Item 200-A based on a concern that the provision reflected an attempt by UP to disclaim its responsibility under Federal Railroad Administration ("FRA") safety rules to inspect railcars for unsafe conditions by making the party releasing a loaded or empty railcar "solely responsible" for ensuring that railcar wheels and safety appliances were "clean from any commodity residue." *Id.*

UP issued Item 200-B in an effort to address NAFCA's concerns. In particular, UP removed the indemnity provision. UP did not believe the provision was unreasonable, but it was willing to remove it to avoid litigation. UP also removed the language stating that shippers and receivers were "solely responsible," so there would be no possible question that it fully intended to perform all safety inspections required by FRA.

One issue NAFCA raised with respect to Item 200-A that UP did not attempt to address in Item 200-B was NAFCA's insistence that, once UP moves a railcar from a customer facility, UP could no longer hold the customer responsible for the presence of lading residue on the railcar's exterior. NAFCA's insistence on this point is perplexing, given that UP's actions will never cause lading residue to be on a railcar's exterior and that UP cannot directly address problems in the loading or unloading process. That is, UP does not load or unload the products or secure the cars to prevent product leakage while they are moving on the railroad. If there is

loading residue on a railcar's exterior, it is because of something the customer has done or failed to do during loading or unloading, not something done by UP.

NAFCA's position appeared to be based on UP's responsibility to inspect cars before moving them from a customer facility. UP inspects cars pursuant to FRA rules before the train departs, and if the inspection reveals an unsafe condition due to product residue, UP addresses the issue then, pursuant to Item 200-B. However, the provision also addresses situations in which UP detects a problem only after the initial inspection, either because it was not found during the initial inspection, or because it did not manifest itself until the car was in transit. UP believes it is reasonable to hold the customer responsible for cleaning its product from the railcar's exterior in either circumstance. The customer is in the best position (i) to prevent product residue from getting on the car's exterior in the first place, (ii) to know if loading or unloading conditions make it likely that product residue will get onto a car's exterior, and (iii) to remove product residue from the cars before they are released into the rail transportation system.

In UP's view, if shippers and receivers have a responsibility to remove product residue from the exterior of railcars and secure the cars for transport before releasing them to UP, they should not be allowed to avoid those responsibilities simply because UP did not detect the problem immediately or the problem manifested itself only after the car was in transit.

UP's effort to address NAFCA's concerns with Item 200-A by establishing Item 200-B were unsuccessful, and NAFCA filed an amended complaint to address UP's establishment of Item 200-B on July 7, 2010.

B. Terms of Item 200-B

Item 200-B sets out UP's rules regarding customer responsibility for removal of lading residue from the exterior of railcars and the prevention of leaking. The provision sets out

the principle that the party releasing a railcar for movement on UP's lines is responsible for removing lading residue from the car's exterior and properly securing the car.

[The party] releasing a loaded or empty railcar for movement on UP's lines shall remove lading residue from the railcar's exterior, including the wheels, brakes, and safety appliances (ladders, handholds, brake handles, catwalks, etc.) and ensure that all valves and discharge ports are properly secured and, if necessary, sealed to prevent leakage during rail movement before tendering the car for movement.

Counsel's Ex. A, Item 200-B.1. The provision then addresses three points at which UP might detect a problem with exterior lading residue, and it explains how UP will address each situation to ensure that the car free from unsafe product residue and properly secured:

- If UP identifies a problem before it switches the car into a train, it will reject the car. It may assess a \$650 surcharge. *Id.*
- If UP identifies a problem after the car was switched from the spot where it was tendered, but while still within the facility where the car was loaded or unloaded, it will remove the car from the train and set out the car to be cleaned or secured by the shipper or receiver, as necessary. It may assess intraplant switch charges, plus a \$650 surcharge. *Id.*, Item 200-B.2.
- If UP identifies a problem after the car was removed from the facility where the car was loaded or unloaded, it will set out the car and notify the shipper or receiver to arrange for the car to be cleaned or secured, as necessary. It may assess applicable switch charges for removing the car from the train and returning it to a train, plus a \$650 surcharge. *Id.*, Item 200-B.3.

Finally, the tariff provision makes clear that the provision's existence does not shift any liabilities associated with tendering unsafe cars from the customer to UP. Specifically, Item 200-B states that UP's assessment or a customer's payment of any charges or surcharges under the tariff does not relieve the customer of its responsibility for any damages "attributable to lading leakage or lading residue on the exterior of railcars." *Id.*, Item 200-B.4. It also states that UP's acceptance of a railcar that is later determined to be leaking or to have lading residue

on its exterior “shall not constitute a waiver by UP of the [customer’s] obligations to tender railcars suitable for safe movement.” *Id.*

Significantly, Item 200-B does not absolve UP of any liability it may have to injured third parties, injured employees, or even injured customers, in an accident involving a railcar that is leaking or has lading residue on its exterior. Nor does Item 200-B shift UP’s liability to the customer in the event of an accident. The tariff provision does not alter the liability rules that apply to accidents.

III. UP’S REASONS FOR ESTABLISHING ITEM 200-B

UP’s business is to transport goods from origin to destination safely, reliably, and efficiently. UP established Item 200-B to better protect its employees and others who come into contact with railcars, to prevent damage to the property of UP customers and UP, and to better ensure the reliability and efficiency of its operations. Product residue on the exterior of railcars, particularly on railcar wheels, can interfere with the operation of UP’s classification yards, place UP employees in harm’s way, and reduce the reliability and efficiency of the yards and local operations. Product residue on railcar safety appliances can interfere with the safe use of these appliances by UP and customer employees, as well as emergency personnel, who may need to use them.

As Mr. Ronci explains in his statement, UP established Item 200-B as part of a program designed to reduce the incidence of over-speeding railcars in its classification yards and to mitigate other safety hazards created by product residue on exterior of railcars. Mr. Ronci’s statement describes how product residue on railcar wheels and safety appliances can interfere with UP’s safe, reliable, and efficient operations.

UP is not alone in recognizing the hazards created by leaking railcars and railcars with product residue on their exterior. In fact, UP's concerns are reflected in the practices of others in the rail industry, including other railroads, shippers, and receivers.

In the sections below, we describe the safety hazards and other concerns that UP designed Item 200-B to address, and we show that these concerns are recognized by other railroad industry participants, including members of NAFCA.

A. Safety Hazards Created by Product Residue on Railcar Wheels

The most common dangerous and disruptive effects of railcars with product residue on their exterior and leaking cars (apart from cars leaking hazardous materials) are on the operation of railroad classification yards. At UP's large classification yards, such as Bailey Yard in North Platte, Nebraska, railcars are sorted and assembled into trains based on destination. The cars are pushed by an engine up and over an artificially built hill, called a "hump." The cars are uncoupled at the top of the hill, and then they roll by gravity through a series of switches into their destination tracks in the classification "bowl." As the cars roll downhill, their speed is controlled by a series of retarders, so they can be coupled safely with other cars already on the classification tracks. However, product residue on a car's wheels, whether present on the car from loading or unloading or released while in transit, interferes with the operation of retarders and has caused accidents and near-accidents in UP's classification yards. These incidents are caused when cars exit retarders at an excessive speed. "Overspeeds" can result in derailments and collisions with other cars and railroad equipment (either because the speed of the moving car exceeds the proper speed for coupling or as a result of a derailment). Derailments and collisions caused by overspeeds can damage other railcars and their loadings, damage railroad property, and disrupt yard operations. They also pose dangers to the safety of UP personnel working in the vicinity of the classification yard tracks. (Ronci V.S. at 4-5.)

The dangers posed by overspeeds in hump yards are real. Between January 2008 and October 2011, UP had seventeen overspeed incidents in its classification yards that were reportable to the FRA and attributed to “foreign material” on the wheels of a railcar that went through a retarder.⁶ These incidents involved over \$700,000 of reported damage, and that figure does not include the losses due to disruptions of UP’s operations while the retarder was inspected and cleaned, damaged cars were cleared, and damaged track was repaired. (Ronci V.S. at 6-7.) Mr. Ronci’s statement includes photographs of several of these incidents. (*Id.*, Ex. 2.)

Moreover, UP has experienced a far greater number of non-reportable overspeed incidents – that is, incidents that involved no damage or where the damage did not exceed the reporting threshold established by the FRA – attributable to product residue on railcar wheels. (Ronci V.S. at 6.)⁷

In addition, while no UP employee has been injured by an overspeed incident in recent years, the danger is not merely hypothetical. An overspeed railcar moving through a yard exposes yard employees to risks, especially if the car crashes into other cars that are being classified into trains. Mr. Ronci’s statement discusses an incident in which an overspeed car went through a yard and crashed into a locomotive. UP employees likely escaped injury in that incident only because they were not in the area at the time. (*Id.* at 4-5 & Ex. 2.)

⁶ The FRA has an accident reporting code that is reserved specifically for accidents attributable to “Automatic hump retarder failed to sufficiently slow car due to foreign material on wheels of car being humped.” See FRA Guide to Preparing Accident/Incident Reports, App. C (effective June 1, 2011), available at <http://safetydata.fra.dot.gov/OfficeofSafety/ProcessFile.aspx?doc=FRAGuideforPreparingAccIncReports.pdf>.

NAFCA mentions fifteen incidents in its opening argument because it only looked at the period through August 2011, while UP includes reports through October 2011. (NAFCA Op. at 17.)

⁷ FRA rules require a carrier to report incidents if they cause injury or death, or if they cause rail equipment damage that exceeds a certain threshold. In 2011, the threshold was \$9,400.

UP believes its efforts to prevent overspeed accidents, including its establishment of Item 200-B, have played an important role in reducing the number of incidents in its yards. However, UP strives for continuous improvement in safety: it is working to eliminate these incidents entirely, and Item 200-B continues to play an important part in that effort.

B. Safety Hazards Created by Product Residue on Railcar Safety Appliances

Product residue on railcar safety appliances can also cause serious injury, and even death, to UP employees, employees of other railroads, and customer personnel. In certain cases, emergency response personnel might need to use railcar safety appliances and product residue could interfere with their safe use. The primary risk to these individuals is easy to understand: the risk of slipping or losing one's grip on a safety appliance and falling (and, in situations involving railroad employees, perhaps falling under a moving railcar).

Railcar safety appliances include ladders, handholds, brake handles, running boards, and catwalks. These appliances allow railroad personnel to climb and hold onto the railcars and operate handbrakes, which is something they do when switching cars at yards without humps. Railroad personnel also use ladders and other railcar safety appliances in situations when they must climb onto a leaking car to stop the release.

UP has observed residue from food and petroleum oils, tallow, lards, molasses, and other products that could interfere with the fully safe use of railcar safety appliances. Mr. Ronci's statement includes pictures of cars that were set out under the tariff provision because of product residue on safety appliances. (*Id.*, Ex. 3.)

UP's customers also have a strong interest in keeping product residue from interfering with railcar safety appliances because their personnel also use these appliances. As

NAFCA acknowledged in response to UP's discovery requests, its members' employees use car safety appliances during the loading and unloading process:

Ladders on tank cars are used by many, but not all, shippers to ascend the side of the car to the man-way dome, which serves as the loading inlet. Hand holds are used on occasion, and brake handles (which we assume to mean the apparatus that operates the hand brake) are occasionally used in the loading or unloading process to control the movement of cars.⁸

In addition, in certain situations, emergency response personnel may use railcar safety appliances, for example, to assess the condition of a railcar at the scene of an accident.

Keeping safety appliances clear of product residue is a common-sense safety measure. Railroad personnel operate in an environment where there are many potential safety hazards. UP has a strong safety culture. Its focus on safety has produced continuing reductions in its personal injury FRA reportable rate. Item 200-B helps keep UP employees safe when their work requires them to climb on railcars, and it also benefits its customers and their employees who also use railcar safety appliances in their work.

C. Other Costs Associated With Product Residue the Exterior of Railcars

In addition to harms caused directly by the presence of product residue on railcar exteriors – such as damage to other cars, ladings, and railroad property, and potential injuries to railroad employees – product residue on railcar exteriors increases UP's operating costs, creates delays in UP's operations, and otherwise undermines reliability and efficiency of UP's service to customers. Avoiding these hard-to-quantify costs is also an important motivation behind UP's establishment of Item 200-B.

⁸ See NAFCA Response to UP Interrogatory No. 13. NAFCA's written responses to UP's discovery requests are attached hereto as Counsel's Exhibit C.

Anytime UP identifies a car with unsafe exterior product residue, it must interrupt its normal operations. Just setting out a single unsafe car not only requires additional work for local crews and delays the delivery of that one car; it also delays all the other cars on the train and potentially disrupts transportation plans that call for those cars to make connections with other trains.

Product residue on a railcar wheel can significantly interrupt normal operations at UP's hump yards. A hump at a UP hump yard can process two to three cars per minute. If a residue issue is identified just before a car goes over the hump, operations must be suspended, often for as much as 20 to 30 minutes, as the car is removed from the process. As a result, transportation for many other customers will be affected: either their cars may miss the outbound train on which they were scheduled, or the train will be delayed beyond its scheduled departure. (Ronci V.S. at 6-7.)

UP's yard operations will be even more significantly affected if product residue is not detected until after an overspeed incident occurs. After an overspeed incident, UP personnel suspend hump operations and inspect the retarder to determine the cause of the overspeed. If product residue is discovered on the retarder, the retarder will need to be cleaned, a process that can take more than an hour. If the overspeed results in an accident that damages cars, other equipment, or yard track, then operations will be disrupted for an even longer period of time, as the damage is cleared and the track is repaired. (*Id.*)

UP attempts to recover costs associated with switching individual cars through the charges in its various switching tariffs, and it can seek to recover for damage to its property if an accident is caused by a customer's unsafe loading or unloading practices. The costs associated

with operational delay and disruption, by contrast, are hard to quantify, but they are very real, and avoiding these costs is an important motivation behind Item 200-B.

D. Scope of Commodities Covered by Item 200-B

Item 200-B applies to all commodities transported by UP. Of course, not all commodities have the same potential to cause the types of safety hazards the provision was designed reduce. However, UP's experience has shown that the hazards created by product residue on the exterior of railcars, especially railcar wheels, can be caused by a broad range of commodities. UP maintains a database in which it records incidents involving product residue. The database identifies more than twenty-five different commodities that have been involved in these incidents. UP's interest is in preventing accidents and injuries arising from any source, not in targeting certain commodities, so it has not limited the application of Item 200-B to any pre-defined list of products. (Ronci V.S. at 8.)

Many of the commodities that have caused residue problems are oils, tallows, and greases. As one would expect, these products can coat safety appliances, making them slippery or difficult to grip. These products can also interfere with a retarder's ability to grip railcar wheels and thus slow the cars. UP's analyses of retarders and railcars involved in overspeed incidents have established that the presence of these products on railcar wheels has caused overspeed incidents in hump yards. (*Id.* at 11.)

The effects of other commodities on retarders may be less intuitive, but they have been observed many times by UP. Certain dry products, including salt and potato flakes, have also caused overspeed incidents by interfering with the operation of retarders. These materials can become caked onto a car's wheels and prevent retarders from gripping a car's wheels and slowing the car. (*Id.* at 7.)

When product residue is found on the exterior of a railcar, it is always the result of a problem that occurred during loading or unloading – processes that are under the control of shippers and receivers, not UP. In UP's experience, product residue typically ends up on a railcar's wheels and safety appliances in one of several possible ways.

First, liquid products can spill directly on the railcar and railcar safety appliances during the loading or unloading process, and they can also run down the sides of the railcar and work their way down to the wheel during the loading process or while the train is in transit. While most shippers apparently try to take precautions to prevent spills on railcars from occurring, the fact that UP stops railcars with these products on the exterior and on safety appliances shows their precautions do not always work. In fact, as Mr. Ronci relates, UP personnel have visited loading facilities linked to residue problems and watched as loading devices spill product on railcars. (*Id.* at 13.) These spills can be very difficult for UP train crews and personnel who inspect railcars to detect. For example, tallow is loaded as a warm, clear liquid, and it hardens into a visible substance only after it has cooled. (*Id.* at 19.) Spills of other commodities are also difficult to detect because they are often clear, or dark colored, or are otherwise difficult to distinguish from harmless dirt or dust on rail equipment. Mr. Barnum explains in his statement why product residue is particularly difficult to detect on railcar wheels. (Barnum V.S. at 3-5.)

Second, liquid products may leak in transit because the railcar was not adequately secured in the first place or a gasket failed, or sometimes because the car was overloaded. When this happens, the product can escape from the top of the railcar, drip down the sides onto safety appliances, and also work its way onto the wheels. Mr. Ronci's statement provides examples of incidents in which product leaked from a car while in transit. (Ronci V.S., Ex. 4.)

Third, liquid products may escape from the top of the car as part of the unloading process. In particular, as Mr. Ronci explains in his statement, tallow receivers heat the cars to return the tallow to liquid form before pumping the commodity out of the car, and sometimes the increase in pressure from the heat causes the commodity to escape from the top of the car and spill onto the exterior, including the safety appliances and wheels. (*Id.* at 13-14 & Ex. 5.)

Finally, liquid and dry products may get on railcar wheels because the industry track on which the cars are loaded or unloaded are fouled with product – that is, the cars sit in piles or puddles of product where they are being loaded. As Mr. Ronci relates, UP personnel have visited facilities linked to residue problems and observed cars sitting on fouled loading or unloading tracks. (*Id.* at 14-15 & Ex. 6.) However, absent these special site visits, UP personnel usually are not aware of conditions at a particular loading or unloading site because customers often deliver or receive their cars a location other than the loading or unloading point. (*Id.* at 16 n.11; *see also* Barnum V.S. at 5.)

UP's concern about safety hazards created by product residue on the exterior of railcars is not confined to particular commodities or a particular mode by which product residue contaminates railcar wheels or safety appliances. In addition, although the risks may be greater with certain commodities, customer facilities may receive and release loads and empties for a variety of commodities, and cars with different commodities can share the tracks that are contaminated. UP therefore drafted Item 200-B to address any situation in which product residue on the exterior of railcars creates a safety risk.

E. Rules and Policies of Other Rail Carriers Addressing Customer Responsibility for Preventing Product Residue From Becoming a Safety Hazard

UP's concern about the safety hazards created by lading residue on the exterior of railcars is shared by others in the rail industry. UP is not the only railroad with a rule requiring

shippers or receivers releasing loaded or empty railcars for movement to remove lading residue from the exterior of the cars and ensure that the cars are properly secured to prevent leakage during rail movement.

BNSF Railway Company (“BNSF”) has two tariff provisions that address leaking railcars and commodity residue on railcar exteriors. The two BNSF provisions are very similar to the UP provision that NAFCA is challenging in this case. One of BNSF’s provisions applies to private tank cars containing lard, grease, or tallow; the other applies to covered hopper cars.⁹

BNSF’s tank car rule provides that the shipper or receiver releasing a tank car “has the responsibility to clean lading residue from the wheels and exterior,” and to “insure that the railcar is in proper mechanical condition for safe movement and properly sealed to prevent leakage.” If BNSF finds a car “with lading residue on the wheels or exterior” within the origin or destination terminal, it will assess a \$500 “penalty charge” in addition to the switch charge it assesses for returning the car to the customer facility for “proper cleaning.” If BNSF finds such a car while the car is in transit, it will not hump the car, but will instead switch the car manually, assessing an intra-terminal switch charge and a \$500 “penalty charge” per car “for the manual switching performed at each hump location” in the route from origin to destination.

BNSF’s covered hopper rule similarly provides that the shipper or receiver releasing a car “has the responsibility to clean lading residue and debris from the exterior of covered hopper cars prior to releasing [the cars] from their facility.” If BNSF finds a car “to be dirty or unsafe for movement due to lading residue” at the origin or destination, it can either

⁹ See BNSF Rules Book 6100-A, Item 3070 (effective June 4, 2007) & Item 3251B (effective Sept. 20, 2011, superseding Item 3251, originally effective Sept. 1, 2006). These items are attached hereto as Counsel’s Exhibit D.

reject the car, return it to the customer, or clean the car, and it will assess a \$500 “penalty charge,” as well as any costs for cleaning, and any applicable switching charges. If BNSF finds such a car while the car is in transit, it will switch the car to a cleaning track and assess a \$500 “penalty charge,” cleaning costs, and switching charges.

CSX Transportation, Inc. (“CSXT”) also requires that its customers clean railcar wheels that become “contaminated” with product residue.¹⁰ Like UP, CSXT has concluded that residue from a wide variety of products can detrimentally affect the safe operation of its hump yards: “Wheel contamination from consumer products like flour, canola oil, cornstarch and other similar substances can cause serious incidents at our hump operations and reduce the rail cars [sic] braking effectiveness.” CSXT therefore requires its customers to clean railcars prior to releasing them for transportation: “If railway equipment has rolled through a contaminated area, you must ensure the wheels are cleaned of any contamination before being released to CSXT.”

Industry-wide safety guidelines also stress the importance of shipper and receiver behavior during the loading and unloading process in preventing leaking products and product residue from becoming a safety hazard. Perhaps the most widely referenced guidelines for the safe loading and unloading of tank cars are contained in AAR’s “Pamphlet 34, Recommended Methods for the Safe Loading and Unloading of Non-Pressure (General Service) and Pressure Tank Cars.”¹¹ Pamphlet 34 describes recommended practices that span the entire loading and unloading process, from the shipper’s or receiver’s receipt of a railcar, to the time the car is released for rail transportation, and it stresses the importance of preventing leakage and

¹⁰ See CSX Transportation Customer Rail Safety Guidebook at 4 (effective June 1, 2010). An excerpt from CSXT’s Guidebook is attached hereto as Counsel’s Exhibit E.

¹¹ AAR’s Pamphlet 34 is attached hereto as Counsel’s Exhibit F.

removing lading residue from the exterior of railcars. Pamphlet 34's penultimate instruction to shippers loading railcars is to remove "[p]roduct spillage on the tank exterior." Pamphlet 34's final instruction to receivers about to release an unloaded car back to a railroad is to "[v]isually inspect the car to verify that no obvious defects are present."

These other railroad rules and industry guidelines make clear that UP is not alone in recognizing the safety hazards posed by leaking railcars and product residue on the exterior of railcars, nor is it alone in attempting to mitigate the risks by reminding their customers of the customers' responsibility to observe safe loading and unloading practices.

F. Shipper and Receiver Policies Addressing Prevention of Product Residue From Becoming a Safety Hazard

Railroads and their customers have a common interest in promoting safe and efficient rail transportation. It is therefore not surprising that shippers and receivers recognize the dangers posed by product residue on the exterior of railcars, their responsibility to prevent product residue from being deposited on railcars during the loading or unloading process, and their responsibility for cleaning product residue from railcars. NAFCA's responses to UP's discovery requests in this case show that many NAFCA members have loading and inspection policies and practices that require attention to leaking railcars and commodity residue on railcar exteriors. NAFCA's opening evidence confirms this point, particularly in the verified statement provided by James Bobitt of Archer Daniels Midland Company ("ADM"). Moreover, UP's customers have shown in their responses to product residue issues identified by UP that they recognize their responsibility for addressing and remediating hazardous conditions.

1. NAFCA Member Loading and Unloading Policies

NAFCA's responses to UP's discovery requests in this proceeding show that UP's customers recognize their responsibility for preventing product residue from being deposited on

railcars during the loading or unloading process and cleaning any product residue from railcars before releasing them for transportation.

According to NAFCA's discovery responses, most NAFCA members attempt to avoid spilling product on the exterior of a railcar during the loading process, and they attempt to clean product that spills onto the railcar during the loading process: "Some facilities equip their loading spouts with buckets that are attached [to] collect any drippings that may emerge from the spout after it is withdrawn from the car. If a loading spout drips any significant amount of product on the side of the tank car, loading personnel are instructed to manually clean the car."¹² "In some instances those drippings are removed by hand; in others by power wash."¹³

In addition, many, but apparently not all, NAFCA members attempt to address the potential for wheel contamination created by the presence of product residue on the ground in the loading area: "[M]ost shippers inspect the ground around loading areas daily and clean up residue accumulations that are apparent."¹⁴ "Employees performing functions related to the loading or unloading of railcars are instructed to remove residue or other substances which, in the judgment of handlers and managers, are excessive, impure, or unsafe."¹⁵

NAFCA members also recognize their responsibility to inspect cars before releasing them to the railroad: "NAFCA shipper members conduct inspections of railcar exteriors after loading at facilities where the loading process is performed by a NAFCA

¹² NAFCA's Response to UP's Interrogatory No. 5.

¹³ NAFCA's Response to UP's Interrogatory No. 3.

¹⁴ *Id.*

¹⁵ NAFCA's Response to UP's Interrogatory No. 5.

member.”¹⁶ According to NAFCA, the standard that its members apply “to determine what degree of exterior cleaning, if any, is necessary is a subjective standard,” but “[s]ome members have a zero tolerance for residue, depending on where the residue is located on the car.”¹⁷

NAFCA says that its members apply the same approach to inspecting for and cleaning exterior residue after unloading and before releasing an empty car to the railroad.¹⁸

NAFCA did not indicate in its written discovery responses which members have adopted which particular policies, but it did produce two documents reflecting what might be characterized as a “zero tolerance” policy for product residue on the exterior of railcars:¹⁹

- {

}

- {

}

NAFCA also produced documents in discovery that illustrate the practices certain NAFCA members follow to ensure that railcars released to the railroad are clean and properly secured to prevent leakage. UP believes there is no serious dispute that shippers and receivers are responsible for removing lading residue and properly securing their cars, but we provide

¹⁶ NAFCA’s Response to UP’s Interrogatory No. 9.

¹⁷ *Id.*

¹⁸ NAFCA’s Response to UP’s Interrogatory No. 11.

¹⁹ The two documents are attached hereto as Counsel’s Exhibit G. NAFCA indicated that many of its members have unwritten policies relating to loading and unloading railcars, so it is not possible to determine from NAFCA’s discovery responses how many of its members have “zero tolerance” policies. *See* NAFCA’s Response to UP’s Interrogatory No. 2.

several examples of customer checklists to demonstrate that customers understand and accept these responsibilities.²⁰

In addition, NAFCA's witness, Mr. Bobitt, confirms in his verified statement that his company recognizes and accepts responsibility for avoiding problems created by the presence of product residue on the exterior of tank cars. Mr. Bobitt outlines the requirements for securing loaded tank cars and states that his company "follows all of these procedures, and keeps a record of each car loaded on which the loader affirmatively indicates that all necessary steps have been followed." (NAFCA Op., Bobitt V.S. at 3.) Mr. Bobitt also states that ADM takes steps to clean the exterior of the loaded railcars: "If liquid is observed on the side of the car or the wheels after loading, it is removed by hand or by power wash, depending on the circumstances." (*Id.*)

Mr. Bobitt's statement also confirms that ADM recognizes the validity of UP's concerns about the presence of product residue on customer loading tracks as a potential source of wheel contamination and the shipper's responsibility to address the issue:

Due to testing of outlet valves on tank cars, occasional malfunctions of those valves, and product that may drip on the side of the car as the loading boom is swung away from the man-way hatch, there are occasions when pools of liquid containing product residue form around our yard tracks and pose a potential source of wheel contamination. . . . Our yards are inspected daily for such conditions, and vacuumed clean of any visible liquid pools. (*Id.*)

Mr. Bobitt concludes his statement by noting once more that his company takes responsibility for removing product lading from the exterior of railcars: "ADM tenders its cars

²⁰ The checklists are provided as Counsel's Exhibit II. Counsel's Exhibit I provides two sample checklists posted on the website of Union Tank Car Company, a tank car owner and leasing company that is a member of NAFCA. One checklist is a "Tankcar Loading Checklist," which includes as an item to be addressed after loading: "Has car been checked for spillage? If spillage occurred, has it been removed?" The other checklist is a "Tankcar Unloading (continued...)"

to UP in clean, safe condition. Cars are inspected for exterior product residue and washed by power hose if necessary.” (*Id.*)

UP applauds this type of effort by ADM, other NAFCA members, and UP’s many other customers that take a similar approach.²¹ UP established Item 200-B to help ensure that all customers take similar responsibility for their loading and unloading practices at all times.

2. UP Customer Responses to Product Residue Issues

UP customers generally appear to recognize that product residue on the exterior of a railcar creates safety hazards and reflects a problem with their loading or unloading process. As Mr. Ronci explains in his statement, when UP stops a car because of product residue, its customers typically react by acknowledging a problem with the loading or unloading process. Moreover, in those situations, UP’s customers have accepted that the shipper or receiver is responsible for restoring the car to safe operating condition. When UP has stopped a car and communicated the reason to its customers, not a single customer has taken the position that NAFCA is taking in this proceeding – that a shipper’s or receiver’s responsibility for the presence of exterior product residue ends once UP moves the car. (Ronci V.S. at 22.)

As discussed more fully in Section IV, UP uses Item 200-B as one element of a broader effort to encourage customers to address safety hazards created by problems in their loading or unloading processes, not as an opportunity to impose a surcharge. (To date, UP has not imposed a surcharge under Item 200-B or 200-A because of the cooperation it receives after

Checklist,” which includes as an item to be addressed after unloading: “Has car been checked for spillage? If spillage occurred, has it been removed?”

²¹ NAFCA states that it could have obtained “a dozen or more” statements similar to Mr. Bobitt’s, demonstrating that these efforts are not limited to only a few facilities or shippers. (NAFCA Op. at 19.)

outreach efforts.) Thus, when UP stops a car and asks its customer to have the car cleaned, UP provides photographs of the car, so the customer will understand why the car was stopped. (*Id.* at 17.) Customers have responded constructively, acknowledging that loading or unloading issues were the cause, arranging for the car to be cleaned, and sometimes indicating steps they will take to avoid future problems. (*Id.* at 18, 22.)

UP notes that NAFCA has not identified a single instance in which its members contend that UP stopped a railcar because it applied its standards unreasonably, or a single instance in which its members contend that UP misattributed the cause of a product residue problem to a shipper rather than a receiver. This absence of complaints is especially telling, because UP has been operating under Item 200-B or its predecessor since November 2008.

IV. UP'S USE OF ITEM 200-B AS PART OF A BROAD EFFORT TO REDUCE SAFETY HAZARDS ASSOCIATED WITH LEAKING RAILCARS AND PRODUCT RESIDUE ON THE EXTERIOR OF RAILCARS

UP's established Item 200-B as part of a broad effort to reduce the safety hazards associated with leaking railcars and product residue on the exterior of railcars. NAFCA claims UP established Item 200-B to "transfer" to shippers "all responsibility" for ensuring that a car's exterior is safe for transportation. (NAFCA Op. at 2.) Nothing could be further from the truth: most UP customers load and unload their products safely every day. But when issues arise, Item 200-B gives UP an opportunity to reinforce the importance of safe practices and partner with them to help address loading and unloading issues. As Mr. Ronci explains, UP has so far not imposed a single surcharge under Item 200-B or its predecessor. Indeed, UP has devoted substantial resources to visiting customer facilities to help identify and resolve loading and unloading issues. But UP cannot address the hazards created by leaking railcars and product residue without the active cooperation of its customers. Item 200-B provides an extra bit of

incentive to those customers that fail to recognize their responsibilities for instituting safe loading and unloading practices and might otherwise reject UP's outreach efforts.

A. UP Works With Customers to Help Them Understand and Address Product Residue Issues.

Item 200-B is just one part of UP's efforts to work with customers to identify and fix loading and unloading practices and conditions that create safety hazards. As Mr. Ronci explains, UP focuses substantial efforts on addressing problems with loading and unloading practices and conditions because that is the place in the transportation chain where problems arise: if products are properly loaded and unloaded into railcars and any spills are cleaned as part of the process, and if loading and unloading tracks are kept clear of product residue, then railcars with unsafe product residue will never enter the transportation system. In other words, UP's customers have control over whether product residue ever becomes a problem, because they are the ones that load or unload the cars, and the loading and unloading occurs at their facilities. UP's after-the-fact inspections can catch problems, but a safer approach is to proactively try to prevent problems from occurring in the first place.

UP's efforts to work cooperatively with its customers are demonstrated by its procedures for handling situations in which it identifies a safety issue arising from product residue on individual railcars.

First, UP personnel seek to identify situations that present an actual safety hazard. Item 200-B does not create a "white glove" cleanliness standard for railcars. (*Id.* at 16.) UP personnel are instructed to stop a car and set it out for cleaning only if the presence of product residue poses a safety risk. UP has no interest in disrupting the operation of an entire train or the operation of its switching yards and delaying service for its customers because a car is a little dirty.

UP believes its customers understand the difference between a car that might not pass a “white-glove” test and a car that is unsafe because of product residue on safety appliances – after all, customer personnel often use the safety appliances as part of the loading or unloading process. However, when UP stops a car that requires cleaning, it takes pictures and sends them to the customer to help explain why it stopped the car. (*Id.* at 17.) As noted above, NAFCA has not identified a single situation in which it claims that UP imposed an unreasonable standard for stopping cars because of product residue problems.

Second, UP personnel apply the same standard to both loaded and empty cars. NAFCA is therefore wrong when it claims that Item 200-B leaves shippers of loaded cars with responsibility for product residue that is present on cars because of problems in the unloading process. (NAFCA Op. at 20.) When UP stops an empty car for cleaning, it looks to the party that released the car to UP. (Ronci V.S. at 14.)

UP has less than a handful of incidents in which the shipper and receiver pointed their fingers at each other. In those few cases, UP arranged for the cleaning – even though the presence of product residue plainly did not result from anything UP did. (*Id.* at 18.) Notably, NAFCA has not identified a single situation in which it alleges that UP held a shipper responsible for a product residue issue created by a receiver.

Third, UP tries to work with its customers to address the underlying reasons for product residue problems through site visits to customer loading and unloading facilities. As discussed above, in UP’s experience, product residue issues have only a few possible root causes: spillage of product directly onto the railcar’s exterior during loading or unloading; transfer of product residue from the ground or tracks to a railcar’s wheels at the loading or unloading facility; or leaks from improperly secured cars. Where UP observes a pattern of

problems with a customer, UP offers to send Damage Prevention Services personnel to observe the customer's facility and help identify the source of the problem. (*Id.* at 20.)

On visits to customer facilities, UP is often able to identify the likely source of the product residue, and it has often involved badly fouled loading or unloading areas, either because of a failure to clean product residue from the ground or because the facility's physical condition allows residue to pool in the loading or unloading area. Mr. Ronci's statement contains pictures of some of the conditions that UP has encountered. (*Id.*, Ex. 6.) UP's customers usually agree to remedy the situations when they have been identified by UP. UP believes that, in most cases, the customer recognizes its obligation to load or unload product in safe conditions, but Item 200-B certainly provides an incentive.

Fourth, UP has not charged a single customer the surcharge established in Item 200-B. (*Id.* at 24.) When UP has invoked Item 200-B, it has done so to require customers to arrange for unsafe product residue to be cleaned from their cars – which is no more than the customers should have done in the first place. Item 200-B is about safety, not generating revenue: UP would prefer never to impose a surcharge. (*Id.*)

Nonetheless, the surcharge serves two important purposes. First, as discussed above, there are certain costs associated with the delay and inefficiencies caused when cars must be set out for cleaning that cannot readily be quantified, and UP believes it is fair to provide for recovery of those costs through a reasonable surcharge.

Second, and more important, some customers require an extra incentive to address persistent loading or unloading problems. If the only consequence of failing to exercise caution in the loading and unloading process is that the customer will have to remove lading residue on those occasions when it is caught, some customers may decide that they are better off cleaning

only the cars that are caught by UP, rather than creating safer processes that will put all of its cars in a safe condition before tendering the cars to UP.²²

As discussed in the next section, UP needs the parties that control the loading and unloading process to play their part.

B. UP Needs Customer Cooperation to Help Address the Problems of Leaking Railcars and Product Residue on the Exterior of Railcars.

In its opening statement, NAFCA argues that UP cannot reasonably require its customers to take responsibility for cleaning product residue from the exterior of a railcar after the customer has released the car to the railroad. NAFCA asserts that UP should be required to protect itself, its employees, and the property of other customers against the dangers created by leaking railcars and product residue on the exterior of railcars solely through its own inspection process. (NAFCA Op. at 6-9, 14.) NAFCA's views are disheartening to read, and they reflect an unrealistic view of railroad operations and how to achieve safer operations. As Mr. Ronci explains, safety inspections are a vital part of UP's operations, but efforts to detect unsafe conditions after they are present are no substitute for preventing unsafe conditions from being created in the first place.

1. Customers Are in the Best Position to Prevent Leaking Railcars and Railcars With Exterior Product Residue From Moving on UP.

One reason why NAFCA's views are so disheartening is that UP's customers are the parties in the best position to prevent leaking railcars and railcars with exterior product residue from ever creating an unsafe situation on UP. The customers will know whether product

²² In fact, customers with products that are the most difficult for UP to detect would have the least incentive to take steps to improve their loading and unloading processes because they would be the least likely to get caught.

spilled on the car in the loading or unloading process; they will know the condition of their loading or unloading tracks; and they are the ones responsible for securing the car. (Ronci V.S. at 19.) Moreover, the shipper or receiver can have equipment available at the loading or unloading facility to remove any product residue that spilled onto the car or migrated onto the wheels from fouled loading or unloading tracks. If customers take responsibility for the loading and unloading process, no railcar with a lading residue problem should ever be released to UP.

As Mr. Ronci explains based on his extensive experience in UP's Director of Damage Prevention Services, the best way to prevent accidents from occurring is to build safety into every step of the process – that is, to avoid creating hazardous conditions, rather than simply to focus on catching safety hazards after they have been created. In addition, it is more efficient to avoid creating the condition than to rely on inspection to catch it, reject the car, separate the car from other acceptable cars, and return it back to the customer to clean it. That increases costs, delays cars, and disrupts operations. (*Id.* at 18.) That is why UP has devoted substantial resources to visiting customer facilities and working with its customers to identify and correct issues in their loading and unloading processes. UP wants to help customers develop loading and unloading processes that keep product residue from the exterior of the railcar in the first place and ensure that they have effective approaches for cleaning up any spills that do occur. If customers build safety into their own processes, they will not release cars that have been improperly secured or have other product residue problems.

2. Pre-Departure Inspections Do Not Eliminate the Need for Safe Loading and Unloading Practices.

UP personnel are instructed to inspect railcars in accordance with FRA rules, but inspections alone are no substitute for UP's broader efforts to encourage shippers and receivers to adopt safe loading and unloading practices. UP train crews do reject cars with lading residue

problems, as the discovery material produced in this case makes clear. Indeed, in one particular incident, the shipper noted that a car UP had stopped must have leaked in transit, because the “local crew is very picky and never would have pulled that car out looking like that.”²³

However, local crews cannot be expected to detect every product residue problem in FRA-mandated pre-departure inspection for a variety of reasons.

First, railcars with product residue problems may not begin to leak until they are already in transit. A pre-departure inspection will not identify such leaks, but they can be just as problematic as product spills during the loading or unloading process. Once the product leaks from the railcar, it can migrate down the side of the car to the safety appliances or even the wheels, where it can interfere with the safe operation of UP’s yards. (Ronci V.S. at 9, 13.)

Moreover, that a product begins leaking after the shipper released the car does not mean the shipper could not have done anything to prevent the leak in the loading process. To the contrary, UP’s experience is that product leaks reflect failures by the shipper to properly secure the car for transportation.

Second, railcars with product residue problems might have residue present that is not readily visible to a train crew when the pre-departure inspection takes place. As Mr. Ronci explains, several products transported by UP, like tallow and other fats and oils, are clear liquids when loaded into or unloaded from railcars – they do not harden into a more visible form until after they cool down. Oils and other products that can affect the operation of retarders in hump yards also can be clear or dark in color, which makes them difficult to detect on railcar wheels. (*Id.* at 19.) Other products, such as salt and potato flakes, present similar problems – on car

²³ The shipper’s email is attached hereto as Counsel’s Exhibit J.

wheels, they look like dirt and dust. The difficulties in detecting these products are compounded when railroad operations occur at night or in rainy conditions, as they often do. In his verified statement, Mr. Barnum discusses in more detail why it is difficult for UP crews to detect commodity residue on wheels.

UP recognizes that shippers or receivers may also have difficulties in detecting the presence of lading residue for the same reasons as UP, but they are the ones who would know whether, where, and how much of a product was spilled during the loading or unloading process. They know whether railcars are sitting in, or running through, puddles or piles of product during the loading or unloading process. Moreover, the parties loading or unloading the cars can avoid problems by washing the cars before releasing them to the railroad – that is, by following the procedures used by NAFCA member ADM.

Third, as Mr. Barnum explains, the FRA's pre-departure inspection rules do not require UP train crews to inspect specifically for the presence of product residue on the exterior of railcars. (Barnum V.S. at 3.) The rules require train crews to inspect cars for conditions that are "imminently hazardous," which means "likely to cause an accident or casualty before the train arrives at its destination." 49 C.F.R. pt. 215, Appendix D. UP considers the presence of product residue to be a significant safety issue – and it directs local train crews to pay particular attention to shippers at facilities where lading problems have been identified – but that does not logically imply that any failure to detect the presence of product residue in a pre-departure inspection either violates FRA rules or somehow prevents UP from requiring the responsible party to clean the residue if it is detected at some later time.

FRA pre-departure inspections cover a variety of conditions that can dramatically affect safe railroad operations. NAFCA's suggestion that UP is trying to avoid its responsibility

to conduct mandated safety inspections through a rule addressing unsafe product residue is preposterous.

3. UP Cannot Eliminate Product Residue Issues Through Inspection Alone.

Finally, NAFCA claims that UP often does not become aware of a wheel contamination problem until an overspeed incident occurs and that it could solve overspeed problems through a different inspection process. (NAFCA Op. at 14.) As Mr. Ronci explains, UP already tries to ensure that railcars with lading residue on their wheels are not humped at classification yards. UP has often stopped railcars for cleaning before they are humped. UP plainly has not prevented every overspeed incident, but that proves nothing more than that inspection by itself is not a complete solution to the problem. (Ronci V.S. at 16-18.)

NAFCA also implies that UP does not take overspeed incidents seriously because certain documents produced in discovery show that UP has on a few occasions released cars with product residue problems before the cars were cleaned. (NAFCA Op. at 14.) But the documents actually show that the people responsible for releasing the cars were warned to be more careful and that UP's Damage Prevention Services group immediately investigated why the errors had occurred. Moreover, UP's extensive efforts to work with customers to address loading and unloading issues at their facilities refute any claim that UP does not take these issues seriously.

UP takes very seriously the goal of avoiding accidents and injuries arising from the presence of product residue on the exterior of railcars. However, UP cannot accomplish this goal on its own; it needs its customers to take responsibility for adopting loading and unloading policies that minimize the likelihood that cars will have product lading problem when they are released to UP.

V. NAFCA HAS NOT MET ITS BURDEN OF PROVING THAT ITEM 200-B IS UNREASONABLE

UP established Item 200-B under its broad authority to establish operating rules that promote safe, efficient, reliable service. The record shows that UP established Item 200-B to address genuine safety hazards and operational disruptions created by the presence of product residue on the exterior of railcars. The record also shows that the provision simply requires the parties in control of the loading or unloading process to do what they are supposed to do before releasing a car to the railroad: remove lading residue from the car's exterior and ensure that the car is properly secured to prevent leakage while in transit. In short, the record shows that the challenged provision represents a reasonable response to a real problem.

UP's Item 200-B reflects the common-sense principle that the best way to protect against the safety hazards and operational disruptions created by product residue on the exterior of railcars is to require the parties loading and unloading the cars to secure the cars properly and remove product residue from the exterior before releasing the cars to UP. Item 200-B falls well within UP's authority to establish rules that help to ensure safe, efficient, reliable operations. Indeed, UP has many rules that reflect the principle that customers have responsibility for loading cars in a safe manner.

As the party challenging Item 200-B, NAFCA bears the burden of proof that the provision is unreasonable. *See N. Am. Freight Car Ass'n v. BNSF Ry.*, STB Docket No. 42060 (Sub-No. 1), slip op. at 5 (STB served Jan. 26, 2007) ("[T]he burden is clearly on Complainants to prove their claims"), *pet. for review denied sub nom. N. Am. Freight Car Ass'n v. STB*, 529 F.3d 1166 (D.C. Cir. 2008). NAFCA fails to carry its burden of proof:

- NAFCA has not shown that leaking railcars or the presence of product residue on the exterior of railcars does not create safety hazards and disruptions of railroad operations.

- NAFCA has not shown that the parties loading or unloading railcars are not responsible for leaking railcars or the presence of product residue on the car's exterior.
- NAFCA has not shown that UP is in a better position than the party loading or unloading a railcar to secure railcars after loading or unloading, and to detect and remove unsafe product residue.
- NAFCA has not shown that UP could operate more safely and efficiently by relying solely on its own inspections of railcars.
- NAFCA has not shown that UP applies Item 200-B unreasonably to impose unfair burdens on shippers or receivers.

Moreover, many of NAFCA's specific complaints reflect misunderstandings of Item 200-B. For example, NAFCA states that Item 200-B "places the onus on an origin shipper to clean lading residue from empty cars." (NAFCA Op. at 2.) But that statement simply is not true: Item 200-B applies to receivers as well as shippers. As another example, NAFCA states that Item 200-B "holds consignors, consignees, or agents absolutely responsible for property damage, costs associated with environmental contamination, personal injury, or death attributable to lading leakage or lading residue on the exterior of railcars, including wheels." (*Id.* at 18.) Again, the statement simply is not true: Item 200-B says nothing of the sort.

However, UP and NAFCA have at least one real disagreement: According to NAFCA, once a UP train crew accepts a railcar for movement, UP cannot reasonably require the party that loaded or unloaded the car to pay for cleaning if UP later determines that the car is not safe for movement because it is leaking or has product residue on the car's exterior. NAFCA says Item 200-B is an attempt by UP "to shift the burden to shippers of making sure cars are safe for transportation." (*Id.* at 10.) But the provision does not shift any burdens: UP remains obligated to inspect cars and detect safety problems, and the party loading or unloading the cars remains responsible for securing the car to prevent leakage and removing product residue from the exterior of the car.

Ironically, NAFCA is the party trying to shift burdens. NAFCA does not dispute that shippers and receivers must load or unload cars in a way that prevents product residue from accumulating on the exterior. However, NAFCA argues that, if UP fails to notice the product residue immediately, it “forfeit[s] its ability” to require the responsible party to take corrective action. (*Id.*) Item 200-B merely ensures that the parties in control of loading and unloading remain responsible for that process, even if their leaks or spills are not immediately apparent.

The Sections below address the Boards standards for determining whether a tariff provision is unreasonable and show that NAFCA’s objections to Item 200-B have no merit.

A. The Board’s Standard for Determining Reasonableness of Tariff Provisions

Item 200-B requires parties loading or unloading railcars to secure the cars and remove lading residue from the cars’ exterior prior to releasing them to UP. Board precedent makes clear that railroads have the right to establish reasonable rules involving the loading and unloading of railcars. *See, e.g., Ark. Elec. Coop. Corp. – Petition for Declaratory Order*, FD 35305 (STB served Mar. 3, 2011) (loading rules); *Consignees’ Obligation to Unload Rail Cars in Compliance With Carriers’ Published Tariffs*, 340 I.C.C. 405 (1972) (unloading rules); *see also M. Longo Fruit Co. v. Ill. Traction Sys.*, 38 I.C.C. 487, 489 (1916) (“[C]arriers have the right to make reasonable and appropriate rules respecting the acceptance and transportation of traffic.”).

In deciding whether a railroad operating rule is unreasonable, the Board starts from the premise that the rules a railroad adopts “are presumptively right and reasonable.” *Platt v. LeCocq*, 158 F. 723, 731 (8th Cir. 1907). If a railroad is pursuing a “reasonable objective,” the Board’s role is not to second-guess its approach or micro-manage the railroad’s decision-making, but rather to make sure it has chosen a “reasonable solution[.]” *Ark. Elec. Coop. Corp.*, at 14.

The Board asks whether the challenged practice is “a reasonable response to a real problem.” *Nat’l Grain & Feed Ass’n v. Burlington N.R.R.*, 8 I.C.C.2d 421, 434 (1992), and whether the railroad’s actions represent a “reasonable accommodation” between the railroad’s concerns and the customer’s needs, *Granite State Concrete Co. v. STB*, 417 F.3d 85, 93 (1st Cir. 2005). The Board also considers whether the railroad’s actions are consistent with the congressional rail policies set out in 49 U.S.C. § 10101. *See, e.g., N. Am. Freight Car Ass’n*, 529 F.3d at 1171-72.

Item 200-B meets the standards established by the Board, is consistent with precedent, and furthers the national rail transportation policy.

B. UP’s Is Pursuing a Reasonable Objective by Seeking to Reduce Safety Hazards and Operating Disruptions Caused by Product Residue on the Exterior of Railcars.

The evidence in this case establishes that leaking railcars and the presence of product residue on the exterior of railcars creates safety hazards and the potential for disruption of operations on UP. NAFCFA fails to prove in its evidentiary submissions that leaking cars and exterior product residue do not create safety risks or disrupt railroad operations.

1. UP Is Pursuing a Reasonable Objective.

Mr. Ronci’s testimony demonstrates that UP takes seriously the risks associated with product residue, which include injury to railroad personnel and damage to railroad and customer property from overspeed incidents in hump yards, injury to railroad personnel from contaminated safety appliances, and economic losses caused by disruptions of UP operations.

Item 200-B is just one part of a broad effort to protect against the risks associated with product residue. UP is constantly seeking to improve employee safety, and a rule aimed at product residue on railcar safety appliances is a common-sense safety measure. UP has also been active in seeking to reduce overspeed incidents in its yards by working to understand their root causes, and then working to address those causes. Through these efforts, UP has determined

that the cause, in many cases, is product residue on a railcar's wheels. UP has concluded that the best way to address that issue is not to rely on inspections alone, but to also address the source of the problem – the loading and unloading conditions that lead to the presence of commodity residue on railcar wheels in the first place. As Mr. Ronci shows, trying to catch a loading or unloading problem after it occurs will never be as effective as preventing the problem from occurring: there are limits to what even the most vigilant inspection can uncover.

As Mr. Ronci also shows, Item 200-B is designed to help UP change the behavior of its shippers and receivers, not generate revenue. UP uses Item 200-B to ensure that customers focus on loading and unloading issues and to obtain their cooperation in addressing them. Thus, while UP has never collected a dime under Item 200-B, UP employees have visited customer facilities numerous times to help identify and correct loading and unloading problems. UP's actual application of Item 200-B demonstrates both the genuine nature of its objective and the reasonableness of its approach.

2. NAFCA Fails to Prove That UP Is Not Pursuing a Reasonable Objective.

NAFCA fails to show that UP is using Item 200-B to pursue an unreasonable objective. In fact, one of NAFCA's own witnesses, Rick Grossman, Vice President – Equipment for First Union Rail, actually confirms that overspeed incidents can occur when product residue contaminates retarders in classification yards. Mr. Grossman acknowledges that "[i]f there is a foreign matter on the retarder, perhaps left there by a prior car with lading residue on the rim of the wheels, the retarder may not work as effectively and the outgoing car may travel at an excessive speed into its classification track." (NAFCA Op., Grossman V.S. at 1.) Despite the testimony of its own witness, NAFCA tries to downplay the extent of the safety risk, arguing that UP had relatively few FRA-reportable overspeed incidents attributable to foreign matter on car

wheels since 2008. (NAFCA Op. at 11.) However, UP believes the existence of Item 200-B and its predecessor have helped keep down the number of incidents. UP certainly is not eager to prove that is true by eliminating Item 200-B. Moreover, as Mr. Ronci shows, FRA-reportable incidents only reflect incidents that caused damages over a reporting threshold – they do not reflect the full extent of overspeed incidents and thus the risk of a more serious incident. UP considers it a good thing that more harm has not resulted from incidents of this type, but UP's objective is continuous improvement to reduce safety failures.

NAFCA also observes that UP sometimes fails to detect the presence of lading residue before a car goes through a retarder and that, on a few occasions several years ago, UP personnel mistakenly released cars before they were cleaned. (NAFCA Op. at 13-14.) NAFCA asks the Board to conclude from those facts that UP does not take the safety risk seriously. But UP's extensive efforts to address the risks associated with product residue, particularly including its work with customers to improve their loading and unloading processes, conclusively show that UP takes these risks seriously. Overspeed incidents still occur, but UP believes that it has stopped many more from occurring through its efforts. With regard to NAFCA's claims about railcars being released before cleaning, the emails that NAFCA references – which date back to mid-2009 – show that Mr. Ronci and others at UP responded to those mistakes by reinforcing the serious nature of the issue and working to fix flaws in local procedures. No system can be perfect, but UP's consistent focus on product residue issues demonstrates both the sincerity of its safety concerns and its commitment to address them.

NAFCA has not shown that UP's goal of reducing the presence of product residue on the exterior of railcars is an improper objective.

C. Item 200-B Is a Reasonable Response to Problems Caused by Product Residue on the Exterior of Railcars.

UP established Item 200-B because it determined that the underlying causes of product residue problems occur in the loading and unloading process. The evidence in the record shows that, when product residue is found on the exterior of a railcar or a car leaks in transit, it is the result of a problem during the loading or unloading process – processes under the control of shippers and receivers, not UP. NAFCA fails to prove that Item 200-B unreasonably places responsibility for safely loading and unloading railcars on shippers and receivers.

1. UP Reasonably Requires Shippers and Receivers to Load and Unload Their Products Safely.

Mr. Ronci's statement shows how product residue ends up on a railcar's wheels and safety appliances: spillage of product on the car during loading or unloading; leakage from a poorly secured car; or migration to the car's wheels from fouled loading or unloading tracks. The common factor is that none of these causes are within UP's control. Moreover, in each situation, UP is unlikely to know about the problem. Railroad personnel do not load or unload cars, so they would not see a spill occur. Railroad personnel are not the ones that secure the cars for transit. And, railroad personnel frequently pick up and deliver cars at a spot that is different from the location where the cars are loaded, so they are unaware of hazardous conditions that might exist in the loading or unloading area.

Mr. Ronci also explains why addressing product residue problems through railroad inspections alone is neither sufficient nor efficient: a process that seeks to prevent problems from arising in the first place is safer than one that depends on catching problems after the fact. This is especially true in the case of product residue: the party loading or unloading the railcar will secure the car after loading and is thus in the best position to prevent leakage in transit. The same party will know whether product spilled on the car and whether the car sat in a

loading area contaminated by product residue. By contrast, UP train crews will rarely know about problems in the loading process or the loading area. Moreover, cars may not begin to leak, or the leak may not become apparent, until after they are in transit. In addition, many products are difficult to detect in a pre-departure inspection – they will not be an apparent hazard. Placing responsibility on shippers and receivers for releasing cars in a clean and secure condition is a common-sense safety measure.

In addition, as Mr. Ronci shows, addressing product residue problems through inspections alone would mean railroad operations would be disrupted each time a problem is identified. For example, if a UP train crew finds a product residue problem after a car has been switched into a train, the entire train will be delayed as the car is set out. Similarly, if UP yard personnel identify a problem before a car goes over the hump in a yard, classification activities will be disrupted as the car is removed from the process. These disruptions can be avoided if shippers and receivers secure their cars properly and remove exterior product residue before releasing them to UP.

2. NAFCA Fails to Prove That UP Cannot Reasonably Require Shippers and Receivers to Load and Unload Their Products Safely.

NAFCA fails to show it is unreasonable to place responsibility on shippers and receivers for securing railcars and removing product residue from the exterior of cars. NAFCA does not appear to dispute seriously that shippers and receivers have an obligation, when they tender cars to the railroad, to ensure that the cars have been properly secured and are free of exterior product residue. Nor does NAFCA explain, let alone offer any evidence to show, why securing cars and removing product residue places any undue burden on shippers and receivers. NAFCA even provides a witness, James Bobitt, the Director of North American Rail Operations for ADM, who describes the process that ADM follows to secure cars and test for leaks, and how

“[c]ars are inspected for exterior product residue and washed by hand or power hose if necessary.” (NAFCA Op., Bobitt V.S. at 3.) Moreover, NAFCA never claims that a railcar would not be properly secured, or product residue would end up on the exterior of a railcar, because of anything done by UP.

NAFCA also fails to prove that it is unreasonable for UP to hold shippers and receivers to their basic responsibility to tender cars in a safe condition, even after the cars have been accepted by UP. Item 200-B is consistent with BNSF’s rules addressing exterior product residue, with CSXT’s safety rules, and with other tariff provisions established by railroads that hold the party tendering cars to railroads responsible for releasing the cars in a safe condition, including provisions addressing overloaded cars and cars with other loading defects that are discovered during transit.²⁴

Nonetheless, NAFCA claims that Item 200-B is unreasonable because it places a unreasonable burden on *shippers* to clean empty cars that are returned by a receiver with product lading on the exterior, and that it reflects an unreasonable attempt by UP avoid a duty to provide *shippers* with safe, clean cars. (NAFCA Op. at 3, 15.) However, NAFCA ignores the actual scope of Item 200-B, and it misstates the law.

As the language of Item 200-B makes clear, the provision applies to both loaded cars released by shippers and empty cars released by receivers: Item 200-B applies any party “releasing a loaded or empty railcar for movement on UP’s lines.” Thus, Item 200-B does not hold shippers responsible for lading residue problems introduced by receivers. Moreover, UP does actually apply the provision to receivers: as Mr. Ronci testifies, UP stops empty cars for

²⁴ Examples of railroad tariff provisions addressing these issues are attached hereto in Counsel’s Exhibit K.

cleaning because product residue on empty cars creates the same risks of injury, damage, and operational disruption as it does on loaded cars.

Moreover, NAFCA's complaints that some members have received some cars with exterior product residue do not appear to involve the situations addressed in Item 200-B. NAFCA's witness Mr. Bobitt says that ADM receives many cars with product residue from UP, but that portion of Mr. Bobitt's statement does not appear to be addressing cars with unsafe product residue on wheels or safety appliances. (NAFCA Op., Bobitt V.S. at 1-2.) When UP asked NAFCA to produce information regarding instances in which its members complained about exterior product residue on railcars delivered by UP, NAFCA said that its members' records were "not organized" in a way that would allow them to provide the information.²⁵ However, the partial response that NAFCA did provide also suggests that members were not complaining about situations covered by Item 200-B: NAFCA said that its members had reported that "[s]ome UP supplied cars have residue on the top of the cars that appears to have been there for months, or possibly years" and that "[o]ne member has rejected cars for excessive product on the roofs."²⁶

NAFCA is also off-base when it argues that Item 200-B is inconsistent with a rail carrier's responsibility to provide safe and clean cars, as discussed in *Liability for Contaminated Covered Hopper Cars*, 10 I.C.C.2d 154 (1994). NAFCA's argument regarding the *Hopper Cars* is another instance in which NAFCA wrongly suggests that Item 200-B places the burden of removing exterior product residue on shippers only.

²⁵ NAFCA's Response to UP's Interrogatory No. 7.

²⁶ *Id.*

Hopper Cars involved tariff items that required shippers to inspect the interior of railroad-furnished hopper cars before loading, and shifted liability for damages to the product if shippers loaded it into a contaminated car. *Id.* at 154. The Interstate Commerce Commission concluded that the items were unreasonable because shippers had no obligation to ensure that railroad-furnished equipment had been properly unloaded and that the shifting of liability for damage to the product violated the Carmack Amendment. *See id.* at 163-64.²⁷

Item 200-B does not obligate shippers to inspect either the interior or the exterior of the car prior to loading. Item 200-B places responsibility for the condition of empty cars on the party responsible for the unloading process. In this respect, Item 200-B is analogous to the tariff provisions established and maintained by UP and other carriers that require receivers to remove all lading materials from the inside of railcars to ensure they are in proper condition for receiving the next load.²⁸ UP's obligation to provide shippers with clean, safe cars for loading does not preclude it from holding receivers responsible for their performance of the unloading process. *See Consignees' Obligation to Unload Rail Cars in Compliance With Carriers' Published Tariffs*, 340 I.C.C. 405 (1972).

At most, NAFCA's complaints reflect the theoretical possibility a shipper and a receiver may dispute which one is responsible for the presence of product residue in a particular situation. However, NAFCA offered no evidence that UP has *ever* applied Item 200-B to parties that were not responsible for the presence of product residue. Indeed, as Mr. Ronci states, on the

²⁷ As Mr. Ronci observes, problems with product residue on the exterior of railcars have involved privately-owned, not railroad-supplied, equipment. (Ronci V.S. at 14 n.9.) Of course, UP has responsibility for inspecting both privately-owned and railroad-owned equipment to make sure it is safe to move, but it is not responsible for the general maintenance and cleaning of privately-owned equipment.

²⁸ Examples such tariff provisions are attached hereto in Counsel's Exhibit L.

rare occasions when a dispute was unresolved, UP paid to clean the car in question. If a NAFCA member or another shipper or receiver has a specific complaint that UP applied Item 200-B unreasonably in a particular instance, it can bring the issue to the Board. That parties may dispute the application of a rule in a particular situation does not make the rule unreasonable. Item 200-B is a reasonable approach to a reasonable objective, and NAFCA has not presented any evidence that UP has applied the provision in an unreasonable manner.

D. Item 200-B Reflects a Fair Balancing of UP's Interests With the Interests of Its Customers.

Item 200-B does not shift UP's responsibility to inspect railcars, or UP's potential liability for an accident involving a leaking car or exterior product residue, to shippers or receivers. NAFCA's claims that UP is seeking to avoid its obligations to inspect railcars or is attempting to hold shippers and receivers absolutely liable for injuries and damage resulting from its own negligent acts are unfounded.

1. UP Remains Obligated to Inspect Railcars and Responsible for Any of Its Own Negligent Acts.

UP's establishment of Item 200-B does not relieve UP of any obligations to inspect railcars under FRA rules. If UP fails to inspect railcars according with regulatory requirements, it is subject to fines and penalties. UP cannot avoid its legal obligations by pointing to the existence of Item 200-B.

As Mr. Ronci shows, UP established Item 200-B not to reduce its own responsibilities, but because inspection alone is not the safest or most efficient way to address the problems posed by leaking cars or exterior product residue. UP's experience shows that the most effective way to address leaking cars and exterior product residue is to build safety into the entire process: certain problems will not manifest themselves until the cars are already in transit, and others are extremely difficult to identify, even if train crews know what they are looking for.

Thus, when UP train crews perform pre-departure inspections, product residue issues often will not present an apparent safety hazard. By contrast, shippers and receivers will know how a car was loaded or unloaded and under what conditions – they are in a far better position than railroad employees to detect and fix problems that occurred in the loading process.

Item 200-B does not diminish UP's obligations to inspect railcars or increase the obligations of shippers and receivers; instead, it provides UP a means of enforcing the existing balance of responsibilities, which includes securing the cars properly and removing lading residue from the cars' exterior so that the cars are safe when they are tendered to UP.

Finally, Item 200-B does nothing to alter UP's liability for accidents involving exterior product residue. Item 200-B does not even contain the indemnification language that was present in its predecessor. Item 200-A.

2. NAFCA Fails to Prove That Item 200-B Shifts UP's Responsibilities to Shippers or Receivers.

NAFCA fails to offer any support for its claim that UP is using Item 200-B to shift the burdens of performing FRA-mandated inspections from UP to shippers and receivers. NAFCA's claim simply has no basis in fact or law: UP could not point the FRA to Item 200-B as justification for failing to conduct required inspections.

Moreover, NAFCA offers no evidence to support the notion that inspections conducted in accordance with FRA regulations are sufficient to detect any product residue problems. (NAFCA Op. at 8-9.) Nor does it offer any evidence to support its speculation that UP may be failing to inspect cars in accordance with FRA regulations. (NAFCA Op. at 10.)²⁹

²⁹ NAFCA observes that UP's responses to discovery do not assert that UP crews always make a pre-departure inspection of each car, but only that UP's crews are directed to inspect each car. (continued...)

Nor does NAFCA offer any evidence that performing inspections in excess of FRA-mandated requirements would allow UP to address problems associated with exterior product residue in a safer, more efficient, or more effective manner than UP is doing through Item 200-B. NAFCA argues that UP should conduct some type of additional inspection of cars carrying certain products before sending them over the hump in classification yards. (NAFCA Op. at 14.) But NAFCA offers no evidence that UP yard personnel could determine which of the thousands of cars classified in UP hump yards every day carry products that require additional inspections or come from shipper or receiver facilities with loading or unloading problems, much less that UP personnel could perform the additional inspections efficiently and effectively. In short, NAFCA offers no evidence that UP's decision to supplement its existing inspection processes by enforcing the responsibilities of shippers and receivers, rather than by developing some undefined, additional inspection process, was unreasonable.

NAFCA also fails to offer any proof that Item 200-B shifts liability for accidents from UP to shippers and receivers. (NAFCA Op. 13, 18-19.) The fact is that Item 200-B does not shift liability away from UP. Item 200-B simply makes clear that the provision does not free shippers and receivers from any liability for accidents: It provides that (i) UP's assessment of the surcharge "will not relieve [the shipper or receiver] of its responsibility for any [damages or injury] attributable to lading leakage or lading residue on the exterior of railcars," and that (ii) "UP's acceptance of a car that is later determined to be leaking or to have lading residue on

(NAFCA Op. at 9 n.3.) UP's response reflects the fact that UP train crews pick up millions of cars each year, and it is impossible to state with certainty that oversights never occur.

the exterior” will not relieve the party that tendered the car of its obligations under Item 200-B or its “obligations to tender railcars suitable for safe movement.” Item 200-B.4.³⁰

Finally, NAFCA offers no evidence that Item 200-B requires shippers or receivers to bear additional burdens. Indeed, NAFCA and at least some of its members appear to accept that shippers and receivers have a responsibility to tender cars to UP in a safe condition. NAFCA never explains how Item 200-B increases that obligation.

E. Item 200-B Is Consistent With Board Precedent.

As discussed above, Board precedent gives railroads wide latitude to establish reasonable rules involving the loading and unloading of railcars. However, NAFCA argues that Item 200-B is unreasonable based on the analysis the Board used to conclude that BNSF could not enforce its rule to limit the loss of coal dust from the top of coal cars in *Arkansas Electric Cooperative Corp. – Petition for a Declaratory Order*, FD 35305 (STB served Mar. 3, 2011) (the “*Coal Dust Decision*”). (NAFCA Op. at 10-11.) In fact, NAFCA’s arguments help highlight that Item 200-B does not suffer from the same problems as BNSF’s tariff.

First, NAFCA claims that UP has not demonstrated a “significant ‘dirty car’ hazard.” (*Id.* at 11.) Of course, the burden of proof in this proceeding is not on UP, but UP has nonetheless provided extensive evidence through Mr. Ronci’s verified statement demonstrating that it is pursuing a reasonable objective in addressing the problems associated with leaking cars and product residue on the exterior of cars. NAFCA is thus wrong to claim that UP has not shown that Item 200-B addresses legitimate safety and operational issues. Indeed, one of

³⁰ For purposes of comparison, Item 200-A included an indemnification provision, as does BNSF’s current tariff addressing product residue on the exterior of railcars.

NAFCA's own witnesses describes how the presence of product residue on wheels can produce overspeed incidents in classification yards. (*Id.*, Grossman V.S. at 1.)

Second, NAFCA claims that Item 200-B is not "narrowly tailored" because it "encompasses all shippers and receivers of all commodities." (NAFCA Op. at 11.) However, NAFCA does not cite any language in the *Coal Dust Decision* requiring that a tariff be "narrowly tailored." and no such requirement appears in the decision. Railroads have wide latitude in establishing operating rules and practices: tariff provisions are not required to be perfect; they must be "reasonable." Moreover, Mr. Ronci explains why UP has not limited the provision to specific commodities: UP's experience has shown that the hazards created by product residue on the exterior of railcars, especially railcar wheels, can be caused by a broad range of commodities, and sometimes the commodities get on cars carrying different products but that are loaded at the same facility. Of course, UP does not expect problems to arise from shipments of automobiles or lumber, but NAFCA points to no harms from UP's decision not to exclude certain commodities or shippers or receivers from the provision's coverage.

Third, NAFCA claims that Item 200-B, like BNSF's coal dust tariff, lacks "a safe harbor." (*Id.*) However, the problem with BNSF's coal dust rule was that shippers could not be assured of complying with its requirements: even after loading their cars correctly, coal dust could escape during transit. *Coal Dust Decision* at 12. The Board believed that the shippers should have been able to take steps so that, following safe loading, "they could be certain that the carrier would move their commodity without penalty." *Id.*

Here, by contrast, shippers and receivers can take steps to assure themselves of complying with Item 200-B: if they load and unload railcars correctly, product residue should not be on the exterior of the cars. Even if the loading or unloading process leaves some product

residue on the exterior of cars, the shipper or receiver can still avoid even the possibility of a surcharge simply by removing the lading residue before tendering the car to UP. NAFCA provides no evidence that its members cannot assure themselves that they will be in compliance with the requirements of Item 200-B. To the contrary, one of NAFCA's own witnesses, the Director of North American Rail Operations for ADM, testifies that his company always "tenders its cars to UP in a clean, safe condition." (NAFCA Op., Bobitt V.S. at 3.)

NAFCA may also argue that Item 200-B does not provide sufficient guidance to shippers and receivers about how much exterior product residue makes a car "unsafe." However, as discussed above, the employees of NAFCA's members use railcar safety appliances, so they must understand what makes the appliances safe or unsafe. Moreover, one of NAFCA's own witnesses confirms that shippers and receivers understand the concept as it applies to railcars: Mr. Bobitt's sworn statement says that "ADM tenders its cars to UP in a clean, safe condition." (*Id.* at 3.) NAFCA fails to show that shippers and receivers do not understand their responsibility to tender cars to UP in a safe condition.

Moreover, the precise amount of product residue that may make a railcar unsafe will not be an issue if the shipper or receiver releasing a loaded railcar to UP complies with the tariff by "remov[ing] lading residue from the railcar's exterior ... and ensur[ing] that all valves and discharge ports are properly secured." Item 200-B.1. As Mr. Ronci notes, UP has explained to customers that it is not applying a "white-glove test"; UP has also explained that its focus is on wheels and safety appliances; and when UP stops a car, it provides pictures to explain its actions. UP's use of the description "unsafe" in the context of Item 200-B is not unreasonable.

NAFCA also refers to Board precedent addressing the relationship of the Board's jurisdiction to the FRA's jurisdiction. (NAFCA Op. at 11-12.) NAFCA's point is not entirely

clear, but UP plainly is not asking the Board to do anything that would interfere with the safety rules established by the FRA. Indeed, it is NAFCA that appears to want the Board to encroach upon the FRA's jurisdiction: NAFCA appears to be asking the Board to rule that Item 200-B is unreasonable in light of FRA rules regarding the scope of pre-departure inspections. However, the Board does not need to interpret, and should not be interpreting, FRA rules to decide this case.³¹ Board precedent, including the *Coal Dust Decision*, holds that railroads can establish reasonable operating rules to promote safe operations and to reduce the risks of accidents and other service disruptions. Item 200-B should be evaluated under that precedent.

NAFCA also appears to argue that Item 200-B is unnecessary in light of the FRA's ability to fine shippers that have leaking cars. (NAFCA Op. at 16-17.) However, leaking cars are not the same as cars with lading residue on the wheels or safety appliances. Moreover, NAFCA fails to show the FRA has ever fined a shipper for an incident involving lading residue on the wheels or safety appliances.³² And, even if the FRA did ever fine a shipper for such an incident, that still would not preclude UP from exercising its authority to establish rules to promote safe operations and reduce the risk of accidents and service disruptions, or to recover

³¹ NAFCA relies on its view of FRA rules to argue that Item 200-B implies that UP will switch cars into trains without performing an FRA-required pre-departure inspection and will use that violation to impose additional costs on customers. (NAFCA Op. at 18.) However, NAFCA misstates the applicable FRA rules. The FRA's rules plainly provide that the pre-departure inspection "may be made before or after the car is placed in the train." 49 C.F.R. § 215.13(a).

³² If there have been any such fines, they apparently have not provided shippers and receivers with enough incentive to eliminate the problems associated with product residue on the exterior of railcars.

costs it incurs when it identifies and addresses safety hazards by stopping cars and requiring shippers or receivers to remove lading residue from the cars' exterior.³³

F. Item 200-B Is Consistent With the National Rail Policy.

NAFCA makes no attempt to show that Item 200-B is inconsistent with any element of the national rail policy. In fact, Item 200-B is consistent with several significant elements of the national rail policy. Among other things, the policy emphasizes safety of transportation facilities and equipment, and safe working conditions for employees. *See* 49 U.S.C. § 10101(8) (“to operate transportation facilities and equipment without detriment to the public health and safety”); *id.* § 10101(11) (“to encourage . . . safe and suitable working conditions in the railroad industry”). The policy also emphasizes the need to foster sound economic conditions in transportation (*id.* § 10101(5)), encourage efficient management of railroads (*id.* § 10101(9)) and encourage individualized ratemaking (*id.* § 10101(10)).

As discussed above, Item 200-B is aimed directly at reducing the safety hazards caused by leaking railcars and railcars with exterior product residue. Item 200-B provides shippers and receivers with an appropriate incentive to take steps when they load and unload cars to ensure that the railcars they tender to UP are properly secured and free from exterior lading residue. Moreover, Item 200-B fosters sound economic conditions in transportation and encourages efficient management of railroads by reducing operational disruptions caused by leaking railcars and overspeed incidents, and it does so in an efficient manner by encouraging

³³ “Surcharges” or “penalties” to encourage efficient behavior or discourage violations of rules are a well-established feature of tariff provisions. *See, e.g., Nat’l Grain & Feed Ass’n*, 8 I.C.C.2d at 434 (“The cancellation penalty appears to be a reasonable response to a real problem . . .”); *see also* Counsel’s Exhibits D, K & L. NAFCA has not provided evidence that Item 200-B’s surcharge is unreasonable. Moreover, as UP explained above, the potential costs associated with lading residue problems go beyond those that are reflected in switching charges.

shippers and receivers to take actions within their control to load and unload railcars safely so they are tendered in a safe condition. Finally, Item 200-B encourages individualized ratemaking in that it places on shippers and receivers of products the costs that arise when they do not fulfill their responsibilities before tendering cars to UP. *See N. Am. Freight Car Ass'n*, 529 F.3d at 1172.

VI. CONCLUSION

For the reasons described above, NAFCA has not shown that Item 200-B is unreasonable. Item 200-B is a reasonable response to a real problem. Moreover, the provision does not shift UP's responsibilities or liabilities to shippers or receivers; rather, it reasonably requires the parties responsible for loading and unloading railcars to tender cars in a safe condition. Accordingly, the Board should dismiss NAFCA's complaint.

Respectfully submitted,

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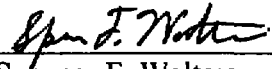
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February 3, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2012, I caused a copy of the
Reply Argument and Evidence of Union Pacific Railroad Company to be served by hand on:

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Counsel's Exhibit A



UP 6004-C

Item: 200-B
EXTERIOR RAILCAR CONTAMINATION

**REMOVAL OF LADING RESIDUE FROM EXTERIOR OF RAILCARS AND
PREVENTION OF LEAKING BEFORE TENDERING**

- 1. Tendering Cars Safe for Movement:** Consignor, consignee or agent releasing a loaded or empty railcar for movement on UP's lines shall remove lading residue from the railcar's exterior, including the wheels, brakes, and safety appliances (ladders, handholds, brake handles, catwalks, etc.) and ensure that all valves and discharge ports are properly secured and, if necessary, sealed to prevent leakage during rail movement before tendering the car for movement. If UP rejects the car as unsafe for movement, UP may assess the party that released the car a \$650.00 surcharge per car rejected.
- 2. Setting Out Unsafe Cars at Origin or Destination:** If UP discovers that the railcar is in an unsafe condition for movement due to the failure to remove lading residue or to properly secure (and seal, if necessary) after the car was switched from the spot where it was tendered but while still within the facility where it was loaded or unloaded, UP will remove the car from the train and set it out for consignor, consignee or agent to clean, secure or seal, as necessary. UP may assess the party that released the car before it was suitable for movement a \$650.00 surcharge per car set out for cleaning, securing or sealing. UP may also assess applicable intraplant switch charges as published in UP Tariff 6004-series for removing the car from the train and setting it out.
- 3. Setting Out Unsafe Cars Enroute:** If UP discovers that the railcar is in an unsafe condition for movement due to the failure to remove residue or to properly secure (and seal, if necessary) after the car was removed from the facility where it was loaded or unloaded, UP will set out the car and notify the consignor, consignee or agent responsible for releasing or tendering of the car, of the its condition and location. That party will be responsible, at its own cost, for the expenses associated with returning the car to a clean and safe condition, as well as properly disposing of residue or debris resulting from this cleaning, securing or sealing. UP may assess that party a \$650.00 surcharge per car set out for cleaning, securing or sealing. UP may also assess applicable switch charges as published in UP Tariff 6004-series for removing the car from the train and returning the car to a train.
- 4. Assessment and/or payment of the foregoing charges and surcharges will not relieve the consignor, consignee, or agent of its responsibility for any property damage, costs associated with environmental contamination and cleanup, personal injury, or death attributable to lading leakage or lading residue on the exterior of railcars, including wheels, brakes, and safety appliances. UP's acceptance of a railcar that is later determined to be leaking or to have lading residue on its exterior will in no way relieve**

the consignor, consignee, or agent of its obligations herein, and shall not constitute a waiver by UP of the consignor's, consignee's or agent's obligations to tender railcars suitable for safe movement.

Counsel's Exhibit B



UP 6004-C

Item: 200-A
EXTERIOR RAILCAR CONTAMINATION

Railcar Contamination Surcharge

Any party releasing a loaded or empty railcar to Union Pacific Railroad Company (UP) is solely responsible for ensuring that the railcar wheels and all safety appliances (ladders, grabirons, brake handles, catwalks, etc) are clean from any commodity residue and that all valves and discharge ports are properly secured and sealed to prevent leakage during rail movement. Failure to adhere to these requirements may result in a per car surcharge and potential delays to shipments.

- 1. Origin or Destination:** In the event, after having been removed from the loading or unloading facility, or while sitting on UP tracks, UP personnel discover that the railcar has any of the above contamination, leakage, or unsafe conditions, the car will be returned to the loading or unloading facility and the consignor, consignee or agent respectively responsible for releasing the railcar to UP may be assessed a **\$650.00** per car surcharge. Consignor or consignee shall further indemnify and hold harmless the carrier from all costs associated with any spill, release, response, mitigation, clean up and ultimate disposal resulting from failure to comply with this item. Furthermore, in addition to the above surcharge, applicable handling/switch charges as published in UP Tariff 6004-series may be assessed.
- 2. In Transit:** A railcar that is found to meet any of the above contamination or unsafe conditions while in transit over UP's lines will be stopped and transported to the first appropriate and available location for decontamination, cleaning, repair or securement. The consignor, consignee or third party acting as an agent will be responsible, at its own cost, for the expenses associated with returning the railcar to a clean or safe condition, as well as properly disposing of any and all residue or debris resulting from this cleaning, decontamination or securement. The consignor, consignee or agent respectively responsible for tendering the railcar to UP may be assessed a **\$650.00** per car surcharge.

Assessment and or payment of the foregoing surcharges will not relieve the consignor, consignee or its designated agent of its responsibility for property damage, environmental contamination and cleanup, personal injury or death attributable to or resulting from the tendering of a contaminated or leaking railcar to UP. Acceptance of a railcar in interchange by UP that is later determined to be contaminated or unsafe will in no way relieve Customer of its obligation herein, and shall not constitute waiver by UP of consignor's, consignee's or its designated agent's obligations hereunder to tender a clean and safe railcar to UP for its handling.

Issued: October 22, 2008
Effective November 1, 2008

UP 6004-C

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Concluded on this page

Counsel's Exhibit C

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42119

NORTH AMERICA FREIGHT CAR ASSOCIATION

v.

UNION PACIFIC RAILROAD COMPANY

NORTH AMERICA FREIGHT CAR ASSOCIATION'S RESPONSE TO
UNION PACIFIC RAILROAD COMPANY'S DISCOVERY REQUESTS

Andrew P. Goldstein
John M. Cutler, Jr.
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Attorneys for
North America Freight Car Association

Dated: November 4, 2011

INTERROGATORIES

Interrogatory No. 1:

Provide the following information for each NAFCA Member:

- a. the name of NAFCA Member:

Response:

Tate & Lyle	The Andersons
Interstate Commodities	CHS, Inc.
Poet	Consolidated Grain and Barge
Louis Dreyfus Commodities	Bp
Gavilon	Archer Daniels Midland
Perdue	Fairmount Minerals
Ag Processing Inc	
Cargill	
Bunge	

- b. the commodities shipped or received via rail by the NAFCA Member, if any;

Response: NAFCA members ship or receive via rail the following commodities in the aggregate, although not all ship and receive all of the listed commodities: grain, grain products, oil seeds, oil seed products, ethanol, bio-diesel, soybean products, chemicals, salt, meat, meat by-products, tallow, rice, fertilizer, liquid magnesium chloride, calcium chloride, beverage alcohol, carbon dioxide, wheat bulger, wheat flour, carbon dioxide, ethyl alcohol, lecithin oil, palm oil, steepwater, beverage alcohol, carbon dioxide, lecithin oil, palm oil, steepwater, frac sand.

- c. for each commodity identified in subpart (b) above, the location of each railcar loading or unloading facility used by the NAFCA Member; and

Response: NAFCA members control railcar loading or unloading facilities in the following locations:

Decatur, IL, Lafayette, IN, Loudon, TN, Troy, NY, York, PA, Ashton, IA, Lake Crystal, MN, Emmetsburg, IA, Gowrie, IA, Jewell, IA, Hanlontown, IA, Glenville, MN, Schuyler, NE, Galena Park, TX, Beaumont, TX, Houston, TX, Seattle, WA, Grand Junction, IA, Norfolk NE, Claypool, IN, Abilene, KS, Abingdon, IL, Adans, ND, Albany, IL, Alexandria, MO, Alexis, IL, Alpha, IL, Alton, IL, Amarillo, TX, Arabi, LA, Arlington, CA, Arlington, WI, Bainbridge, GA,

Bakersfield, CA, Bay City, MI, Benjamin, TX, Benkelman, NE, Benton, IA, Billings, MT, Birmingham, AL, Bonner Springs, KS, Brazil, IN, Brook, IN, Browns, IL, Burley, ID, Cambridge, WI, Canisteo, NY, Carlisle, IN, Carol Stream, IL, Carrington, ND, Carrollton, MI, Catoosa, OK, Champion, NE, Chester, IL, Chester, MT, Chicago, IL, Clarks, NE, Clay City, IN, Clovis, NM, Colton, CA, Columbus, OH, Commerce City, CO, Corpus Christi, TX, Cozad, NE, Crawfordsville, IN, Creston, IA, Creve Coeur, IL, Crowell, TX, Cushing, OK, Danville, IL, Decatur, AL, DeForest, WI, DeLeon, TX, Demotte, IN, Denison, IA, Denver, CO, Dimmitt, TX, Dinuba, CA, Doraville, GA, Dubuque, IA, East Peoria, IL, Eddyville, KY, El Paso, TX, Etter, TX, Fairview, MT, Farragut, IA, Farwell, TX, Florence, SC, Fontana, CA, Fort Dodge, IA, Franklin, LA, Fremont, NE, Fresno, CA, Fulton, IL, Galesburg, IL, Greenville, MS, Gilliland, TX, Gladstone, IL, Golden Gate, IL, Grand Forks, ND, Grand Island, NE, Grand Prairie, TX, Granite City, IL, Greenville, MS, Grier, NM, Guntersville, AL, Hale Center, TX, Hanford, CA, Hankinson, ND, Hardin, MT, Harpster, OH, Haskell, TX, Hastings, MN, Hastings, NE, Hattiesburg, LA, Hayward, MN, Hazel Green, WI, Headrick, OK, Henderson, IL, Henderson, KY, Henderson, CO, Hollis, CA, Houston, TX, Imperial, NE, Irvington, IA, Jamestown, ND, Jefferson, WI, Joice, IA, Joiner, AK, Joliet, IL, Kankakee, IL, Kansas City, MO, Kearney, NE, Kentland, IN, Knox City, TX, LaSalle, IL, Ladoga, IN, Lake Mills, IA, Lancaster, PA, Landisville, PA, Laredo, TX, Lenox, IA, Leonard, ND, Lewistown, PA, Lexington, NE, Lind, WA, Little Chute, WI, Lockney, TX, Longbeach, CA, Eddyville, IA, Los Angeles, CA, Loudonville, OH, Maceo, KY, Macon, GA, Madison, WI, Madisonville, KY, Mapleton, IL, Markham, TX, Marseilles, IL, Martins Creek, PA, Masonville, IA, McFarland, WI, McLeansboro, IL, Memphis, TN, Miami, FL, Midland, TX, Miles City, MT, Minneapolis, MN, Minto, ND, Mobile, AL, Modesto, CA, Mont Belvieu, TX, Moore, MT, Moorhead, MN, Morral, OH, Mount Horeb, WI, Nampa, ID, Nebraska City, NE, New Carlisle, IN, New Franklin, MO, New Orleans, LA, New Rockford, ND, New Windsor, IL, Newport, MN, New Prague, MN, Nickerson, KS, Norfolk, VA, Oakland, CA, Oklahoma City, OK, Omaha, NE, Ophiem, IL, Othello, WA, Ottawa, IL, Owen, WI, Oxford, MS, Paxton, NE, Pekin, IL, Percival, IA, Perris, CA, Perth, WA, Phelps City, MO, Phoenix, AZ, Plainview, TX, Port Barre, LA, Prairie du Chien, WI, Quincy, IL, Red Lion, PA, Red Springs, TX, Rensselaer, IN, Richland, WA, Ritzville, WA, Roachdale, IN, Rochester, NY, Rock Island, IL, Rosedale, MS, Roselawn, IN, Rushville, IN, Saginaw, TX, Saint Joseph, MO, San Jacinto, CA, Sanger, CA, Sauget, IL, Savannah, GA, Sewaren, NJ, Shakopee, MN, Shelburn, IN, Shendoah, IA, Sherman, TX, Sioux City, IA, Smith, MS, South Sioux City, NE, St. Paul, MN, St. James, LA, St. Louis, MO, St. Paul, NE, Stockton, CA, Superior, WI, Tacoma, WA, Tampa, FL, Terre Haute, IN, Texas, TX, Tolleson, AZ, Townsend, DE, Treichlers, PA, Truscott, TX, Tulare, CA, Tulia, TX, Tulsa, OK, Turlock, CA, Valley City, ND, Vicksburg, MS, Victoria, TX, Viola, IL, Visalia, CA, Washtucna, WA, Wataga, IL, Waunakee, WI, Waveland, IN, Weinert, TX, West Jefferson, OH, White Hall, AK, Wichita, KS, Wichita Falls, TX, Wilmington, NC, Wingate, IN, Wolf Point, MT, Yoder, IN, York, PA, Zilwaukee, MI, Zumbrota, MN, Albertville, AL, Butler, KY, Doswell, VA, Defuniak Springs, FL, Cofield, NC, Candor, NC, Nashville, NC, Bordertown, NJ, Chesapeake, VA, Bridgeton, NJ, Vinton, VA, Barber, NC, Toledo, OH, Cleveland, NC, Lynch, MD, Farmville, NC, Salisbury, MD, Bridgeville, DE, Forsyth, GA, Burch, NC, Bordertown, NJ, Coshockton, OH, Rockwell, KY, Bishop, MD, Hurlock, MD, Cofield, NC, Blades, DE, Graham, IN, Chadbour, NC, Hamill, SC, Keymar, MD, Lynch, MD, Roberts, MD, Bishops Cross, NC, Kemco, NC, Richmond, VA, Roanoke, VA, Greenville, NC, Akron, Brush, Burlington, Ackley, Hyde, Idalia, Otis, Schramm, Sterling, Wauneta, Wiggins, Wray, Yuma, CO; American Falls, Blackfoot, Cavendish, Cottonwood, Craigmont, Estes, Fenn, Ferdinand, Grangeville,

Greencreek, Joel, Kennedy Ford, Lewiston, Moscow, Nezperce, Setters, Troy, Viola Winona, Worley, ID; Astor, Beuhler, Brewster, Colby, Dresden, Horace, Kanco, McCallaster, Selden, Selkirk, Sharon Springs, Tribune, Wallace, Weskan, KS; Adrian, Arco, Balaton, Beardsley, Brooks, Browns Valley, Callaway, Charlesville, Chokio, Climax, Comstock, Crookston, Cyprus, Dilworth, Donnelly, Elkton, Elrosa, Ellsworth, Erskine, Euclid, Fergus Falls, Fertile, French, Glenwood, Glyndon, Graceville, Greenbush, Grygla, Hazel, Herman, Hoffman, Jasper, Kanaranzi, Kennedy, Lake Benton, Lismore, Long Prairie, Lowry, Luverne, Magnolia, Mahnomen, Morris, Oklee, Ortonville, Park Rapids, Pipestone, Red Lake Falls, Roseau, Ruthton, Spring Valley, St. Hillarie, Stephen, Tracy, Twin Valley Tyler, Veblen, Warren, Wendell, MN; Albertan, Baker, Broadway, Brockton, Brockway, Chester, Chinook, Choteau, Circle, Columbus, Condon, Conrad, Cut Bank, Denton, Drummond, Fallon, Geraldine, Glasgow, Glendive, Great Falls, Hardin, Harlem, Havre, Hot Springs, Kalispell, Kershaw, Lewistown, Lindsay, Macon, Malta, Missoula, Poison, Ronan, Rudyard, Scobey, Seeley Lake, Shelby, Sidney, Stevensville, Sunburst, Superior, Thompson Falls, Turner, Valier, Winfred, Wolf Point, MT; Anita, Ashley, Belfield, Bow bells, Boyle, Calvin, Casselton, Coteau, Courtney, Devils Lake, Dickinson, Drayton, Edgeley, Edmore, Elkgin, Fairdale, Galchutt, Garrison, Gladstone, Glasston, Grandin, Hampden, Hannaford, Harwood, Hauge, Hazelton, Hensel, Hillsboro, Horace, Joliet, Killdeer, Kindred, Kintyre, Kloten, Kulm, Lakota, Langdon, Lankin, Ligerwood, Lignite, Loma, Mantador, Manvel, McVile, Michigan, Milton, Miot, Mohall, Monango, Morreton, Napoleon, New England, Niobe, Norma, Park River, Pisek, Reeder, Regent, Richardton, Rohrville, Ryder, Sarles, Starkweather, Sterling, Strasburg, Velva, Walcott, West Fargo, Winger, Wishek, Wyndmere ND; Alma, Bertrand, Bladen, Elm Creek, Holdridge, Loomis, Overton, Roseland, Smithfield, Wausa, NE; Kingfisher, Okarache, Omega, Albany, Harrisburg, Madrase, Tillamook, OR; Alexandria, Baltic, Blunt, Bridgewater, Canton, Chameralain, Claire City, Corsica, Corson, Crooks, Davis, Draper, Dupree, Ellis, Ethan, Eureka, Faulkton, Garretson, Gettysburg, Haskins, Highmore, Hurley, Kadoka, Lemmon, Milbank, Mitchell, Onida, Philip, Pierre, Selby, Sisseton, Stora, Tea, White Lake, Wilmont, Worthing, SD; Abernathy, Bovina, Dimmitt, Edmonson, Herefore, Kress, Lehman, Lockney, Muleshoe, Plainview, Ropesville, Tahoka, Whiteface, TX; Black Diamond, Bremer-ton, Bruce, Chehalis Chimacum, Connell, Ephrata, Fairfield, Freeman, Frischnecht, Glade, Hat-ton, Kennewick, Mesa, Moses Lake, Othello, Peone Praire, Poulsbo, Prescott, Purdy, Quincy, Reubens, Rockford, Spangle, Spokane, St. John, Sulphur, Tacoma, Tangent, Toppenish, Touchet, Walla Walla, Warden, Wheeler, WA; Muscatine, IA, Indianapolis, IN, St. Paul, Winona, MN; Memphis, TN, Galveston, TX, Laurel, MT, Davenport, IA, Myrtle Grove, LA, Savage, Winona, MN; Collins, MS, Spokane, WA, Superior, WI, Friona, TX, Rosemount, MN, Kenton, OH, Amarillo, TX, Hutchinson, KS, Fairmont, MN, Mankato, MN; Logan, Missoula, MT; Clewiston, Ft. Myers, Hastings, Lake Placid, Maitland, Zellwood, FL; Champaign, Fairmount (Ryan), Mansfield, IL; Clymers, Delphi, Dunkirk/Redkey, Francesville, Logansport, North Manchester, Oakville, Poneto, Seymour, Walton, Waterloo, IN; Albion, Jonesville, Leslie, Litchfield, Reading, White Pigeon, Webberville, MI; Winnoa, MN, Weeping Water, Fairmount, Paxton, Kearney, Riverdale, NE; Dille, Fremont, Gibsonburg, Greenville, Lordstown, Maumee Conant, Maumee Illinois, Metamora, Toledo Edwin, Toledo Kuhlman, Toledo Reynold Rd, OH; Arena, Oshkosh, Kaukauna, TX; Clayton, IA, Dwight, Naples, Mound City, Pinckneyville, Freeport, Olney, Burnside, Wayne City, Cahokia, IL; Mt. Vernon, Lyle Station, IN; Enfield, IL, Aurora, Jeffersonville, IN; Louisville, KY, North Bend, Riverside (Cincinnati), OH; Van Burden, AR, Anderson Ferry (Cincinnati), OH; Benton, IL, Eagle Grove, Emmetsburg, Mason City, Sgt. Bluff, Sheldon, IA; St. Joseph, MO, Hastings, NE, Newark, Timpie, UT, Hutchison, KS, Cleve-

land, OH, Ludlowville, NY, Atchison, KS, Bellevue, OH, Bradley, IL, Brunswick, GA, Cairo, IL, Chattanooga, TN, Council Bluffs, IA, Crete, NE, Danville, IL, Decatur, AL, Delphos, OH, Destrehan, LA, Emporia, KS, Evendale, OH, Fair Oaks, VA, Ft Worth, TX, Homer, IL, Island Park, IA, Kankakee, IL, Longview, WA, Marion, OH, Marks, MS, Memphis, TN, Modesto, CA, Rose Hill, NC, Rushville, IN, Tallulah, LA, Vicksburg, MS, Waterloo, IN, Woodland, CA Abilene, KS, Albert Cy, IA, Allen, IL, Alton, IA, Belmod, IA, Blair, NE, Brewster, MN, Burt IA, Cedar Rapids, IA, Chapin, IA, Clinton, IA, Colby, KS, Columbus, NE, Des Moines, IA, Enid, OK, Fremont, NE, Glen Elder, KS, Goodland, KS, Gruver, IA, Hanover, KS, Hartley, IA, Havlock, IA, Hutchinson, KS, Jansen, NE, Jefferson, IA, Jordan, IA, Lexington, NE, Lincoln, NE, Madelia, MN, Mallard, IA, Mankato, MN, Memphis, TN, Mtn Lk, MN, Nebraska, NE, Optima, OK, Plans, KS, Roelyn, IA, Salina, KS, Shelby, NE, Sioux City, IA, W. Bend, IA, Wolcott, KS, Kenosha, WI, Ogden, UT, Port Allen, LA.

- d. for each commodity identified in subpart (b) above and each loading or unloading facility identified in subpart (c) above, the number of (i) loaded railcars and (ii) empty railcars by carrier, transported to or from the facility by carriers other than UP in each year from 2008 through 2010.

Interrogatory No. 2:

For each NAFFCA Member, please state whether the NAFFCA Member has rules, guidelines, standards, or practices, either written or unwritten, relating to the loading into railcars or unloading from railcars of commodities identified for that NAFFCA Member in response to Interrogatory No. 1. If the answer for any NAFFCA Member is yes, please describe the rules, guidelines, standards, or practices.

Response: Each NAFFCA shipper member has rules, guidelines, standards, or practices, written or unwritten, related to the loading into rail cars or unloading from railcars of commodities shipped and received by that member. The guidelines, standards, or practices vary according to commodity, facility, and car type. Copies of written rules, guidelines, standards, or practices, if any, are furnished contemporaneously.

Generally, as a matter of practice, loading of tank cars is accomplished by a loading spout that is inserted into the car's dome opening. The amount of liquid commodity loaded into the car is controlled either by gauges on the loading apparatus, or by an automatic loading terminator

that is triggered when liquid in the car rises to the level of the loading spout, similar to how gasoline loading is terminated when the loading hose determines that a car's tank is full. Others load oil through top loading valves so that the product is never exposed to the outside air, or oil may be loaded using flow meters. In some instances, where fully secure apparatus for loading liquids is not available, loading spouts are equipped with buckets or similar containers to catch any drippings from the loading spout as the spout is swung away from the dome opening. Shippers loading tank cars and covered hoppers have pre-load and post-load inspection procedures for quantity and security that are set forth in forms executed by car loading personnel. Examples of such forms are provided contemporaneously.

Dry bulk commodities are loaded through an upper hatch by a quantity measurement gauge attached to the loading device Or on a track or platform scale. In some instances, dry product is loaded into covered hoppers using a certified bulk weight system other than a platform scale and quantities are measured during loading to ensure that sufficient lading is placed into the railcars without overloading. At some locations, cars are passed over track scales for total car weight before releasing the cars.

Shippers of wheat flour and other food ingredients inspect cars prior to loading to insure cleanliness in compliance with food safety standards.

Interrogatory No 3:

For each NAFCA Member, please state whether the NAFCA Member has rules, guidelines, standards, or practices, either written or unwritten, relating to the presence of Lading Residue or other substances (a) on the ground or tracks where railcars are loaded or unloaded, or on the loading or unloading equipment, at the facilities identified for that NAFCA Member in response to Interrogatory No 1; or (b) on the exterior of railcars that are loaded or unloaded at

those facilities. If the answer for any NAFCOA Member is yes, please describe the rules, guidelines, standards, or practices, including in particular those relating to the cleaning or removal of Lading Residue or other substances from the exterior of railcars or the ground, tracks, or loading and unloading equipment.

Response: NAFCOA shipper members have written and unwritten guidelines, standards, or practices relating to the presence of Lading Residue or other substances on the ground or tracks where railcars are loaded or unloaded at facilities controlled by the members, and on the exterior of railcars that are loaded or unloaded at those facilities. Please see response to Interrogatory No. 2. Cars that have been unloaded generally discharge their contents into either a specific receptacle or, in the case of liquid commodities, via a hose attachment that leads to a receptacle. In neither case is it usual for there to be any Lading Residue on the car or ground as a result. In any event, most shippers inspect the ground around loading areas daily and clean up residue accumulations that are apparent. Any residue on the top of a loaded car is removed at the completion of loading. In those rare cases where the loading process results in liquid residue on the car exterior, it is in almost all instances confined to the side of the tank car immediately below the dome. In some instances those drippings are removed by hand; in others by power wash. Residue on loading or unloading equipment, namely, spouts for loading dry or liquid commodities, is not removed between car loadings because the loading equipment will simply acquire more residue as the next car is loaded.

Interrogatory No. 4:

For each NAFCOA Member that has rules, guidelines, standards or practices, either written or unwritten, relating to the cleaning or removal of Lading Residue or other substances from the exterior of railcars or the ground, tracks, or loading and unloading equipment, please state the

amount of Lading Residue or other substances that the rules, guidelines, standards, or practices permit to be present on the exterior of railcars or on the ground, tracks, or loading or unloading equipment before cleaning or removal is required, or after cleaning or removal has occurred.

Response: NAFCA shipper members have written or unwritten standards or practices relating to the presence of Lading Residue on the ground or tracks where railcars are loaded or unloaded or on the exterior of railcars that are loaded or unloaded, or on the loading or unloading equipment, or on the exterior of railcars that are loaded or unloaded at facilities operated by NAFCA members. Excess Residue on cars to be loaded appears to result in large part from a carrier's failure to inspect for excess Residue after the car is unloaded. Removal of commodity residue on the ground or tracks where railcars are loaded or unloaded is addressed in response to Interrogatory No. 4. What appears to the NAFCA shipper employee(s) as excessive residue on the car will be removed either by hand wiping, hosing, power washing, or scrubbing with soap and water. Residue on loading or unloading equipment is not generally removed because of several reasons, including the fact that the loading equipment will almost momentarily be used to load another car or cannot feasibly be removed (as in the case of a spigot used to load liquid commodities). Unloading equipment, in the case of dry bulk commodities, consists of outlet gates on the car, which are not specifically cleaned because they will be closed before the next movement takes place, unless there is either commodity on the gates or a new non-compatible commodity is to be loaded. Outlet spigots on a tank car will not be cleaned for a similar reason, unless a new noncompatible commodity is to be loaded.

Interrogatory No. 5:

For each NAFCA Member, please state whether the NAFCA Member conducts or arranges for examinations or inspections of facilities identified for that NAFCA Member in re-

sponse to Interrogatory No 1 to identify the presence of Lading Residue or other substances on the ground or tracks where railcars are loaded or unloaded, or on the loading or unloading equipment. If the answer for any NAFTA Member is yes, please describe who conducts such examinations or inspections (*e.g.*, supervisor, foreman, inspector, loading machine operator), how often they are conducted, and the scope of the examinations or inspections.

Response: Shippers of bulk commodities, wet or dry, do not generally have written rules, guidelines, or standards which specify the amount of lading residue or other substances on the exterior of railcars or on the ground or tracks before cleaning or removal is required. Employees performing functions related to the loading or unloading of railcars are instructed to remove residue or other substances which, in the judgment of handlers and managers, are excessive, impure, or unsafe. There is no quantification of unacceptable amounts, in part because the UP tariff does not quantify what UP considers to be excessive or unsafe amounts of residue, and it would be unduly time-consuming for shipper personnel to measure amounts of Lading Residue or other substances on the exterior of railcars, or on the ground and tracks. Further, loading equipment used for dry bulk commodities is not cleaned of Lading Residue for the reason that such "residue" will always be in that equipment. Where cars are loaded with liquid commodities, excess Lading Residue is controlled by automated equipment that shuts off the flow of commodity into the car when the level of commodity in the car reaches the level of the loading spout, at which point the loading spout is withdrawn from the car and moved sideways to permit loading personnel to fasten the bolts on the loading opening. Some facilities equip their loading spouts with buckets that are attached collect any drippings that may emerge from the spout after it is withdrawn from the car. If a loading spout drips any significant amount of product on the side of the tank car, loading personnel are instructed to manually clean the car.

Interrogatory No. 6:

For each NAFCA Member, please state whether the NAFCA Member has received complaints from or had any Communications with UP or a railroad other than UP relating to the presence of Lading Residue or other substances (a) on the ground or tracks where railcars are loaded or unloaded, or on the loading or unloading equipment, at any facility identified for that NAFCA Member in response to Interrogatory No. 1; or b) on railcars loaded or unloaded by the NAFCA member at any of those facilities. If the answer for any NAFCA Member is yes, please describe the commodity involved, the facility involved, the railroad that made the complaint or Communication, the nature of the complaint or Communication, and corrective actions, if any, that were taken in response.

Response: NAFCA shipper members have undertaken a reasonable review of their records to locate such complaints or communications with UP, but not with other railroads due to undue burden and because none has a tariff similar to UP's. One shipper recalls a complaint in January, 2011 regarding commodity on the ground surrounding the tracks (on the track shoulders exceeding the top of the rails). Two others have had complaints regarding product on wheels. UP is aware of all such instances.

Interrogatory No. 7:

Identify each instance in which a NAFCA Member rejected, objected to, or complained about a railroad car spotted (a) by UP, or (b) by a railroad other than UP, due to the presence of Lading Residue or other substances on the railcar's exterior, and identify the commodity or substance on the railcar's exterior, if known.

Response: The records of NAFCA shipper members are not organized to disclose the receipt of complaints to or communications with UP relating to the presence of Lading Residue

or other substances on empty cars placed for loading. NAFCA members have made a reasonable effort to find copies of any such complaints or communications, and to recall instances of such complaints or communications even if hard copies cannot be located.

In some instances members receive loaded UP supplied cars which would be rejected by the member if the member elected to follow UP rules to the letter. Some UP supplied cars have residue on the top of the car that appears to have been there for months, or possibly years.

One member has rejected cars for excessive product on the roofs, but does not have records of such rejections.

Interrogatory No. 8:

For each NAFCA Member, please state whether the NAFCA Member conducts or arranges for examinations or inspections of each railcar *prior to loading* at each loading facility identified for that NAFCA Member in response to Interrogatory No. 1. If the answer for any NAFCA Member is yes, please state:

- a. the location where the examination or inspection takes place (e.g., where the railcar is spotted by the railroad or where the car is loaded by the shipper, if the location of those events is different);
- b. who conducts the examination or inspection (e.g., supervisor, foreman, inspector, loading machine operator);
- c. whether the examination or inspection includes an inspection for Lading Residue or other substances on the exterior of the railcar and/or properly functioning, sealed, and secured valves and discharge ports; and
- d. the standard used to determine when the exterior of a railcar requires cleaning because of the presence of Lading Residue or other substances.

Response: NAFCA shipper members generally inspect every car prior to loading. Inspections are made by commodity managers/handlers, and generally cover lading residue, properly functioning sealed and secured valves and discharge ports. Please see, also, Interroga-

tory No. 2. NAFCA shipper members have made a reasonable search of their records to determine instances in which they rejected, objected to, or complained about a railroad car spotted by UP due to the presence of Lading Residue or other substances on the railcar's exterior. Please see response to Interrogatory No. 7. The consequence of complaining about or rejecting a car to UP generally is to disrupt the loading of whatever train unit is taking place, often a 100-car or greater unit. As a result, the shipper often attempts to clean the car in order to keep the loading cycle in progress and in some instances mechanical defects also are corrected prior to loading.

Interrogatory No. 9:

For each NAFCA Member, please state whether the NAFCA Member conducts or arranges for examinations or inspections of each railcar *after loading* at each loading facility identified for that NAFCA Member in response to Interrogatory No. 1. If the answer for any NAFCA Member is yes, please state:

- a. the location where the examination or inspection takes place (e.g., where the railcar is spotted by the railroad or where the car is loaded by the shipper, if the location of those events is different);
- b. who conducts the examination or inspection (e.g., supervisor, foreman, inspector, loading machine operator);
- c. whether the examination or inspection includes an inspections for Lading Residue or other substances on the exterior of the railcar and/or properly functioning, sealed, and secured valves and discharge ports; and
- d. the standard used to determine when the exterior of a railcar requires cleaning because of the presence of Lading Residue or other substances.

Response: NAFCA shipper members conduct inspections of railcar exteriors after loading at facilities where the loading process is performed by a NAFCA member. NAFCA member shippers have no control over car loadings performed by other shippers, even when the NAFCA member has arranged to purchase a commodity from another shipper. Where NAFCA members

conduct inspections, seals, valves and discharge ports are always included. The standard to determine what degree of exterior cleaning, if any, is necessary is a subjective standard, in part due to the absence of any objective criteria set forth by UP. Some members have a zero tolerance for residue, depending on where the residue is located on the car.

Interrogatory No. 10:

For each NAFCA Member, please state whether the NAFCA Member conducts or arranges for examinations or inspections of each railcar *prior to unloading* at each unloading facility identified for that NAFCA Member in response to Interrogatory No. 1. If the answer for any NAFCA Member is yes, please state:

- a. the location where the examination or inspection takes place (e.g., where the railcar is spotted by the railroad or where the car is loaded by the shipper, if the location of those events is different);
- b. who conducts the examination or inspection (e.g., supervisor, foreman, inspector, loading machine operator);
- c. whether the examination or inspection includes an inspections for Lading Residue or other substances on the exterior of the railcar and/or properly functioning, sealed, and secured valves and discharge ports; and
- d. the standard used to determine when the exterior of a railcar requires cleaning because of the presence of Lading Residue or other substances.

Response: Where the inspection takes place varies from facility to facility. In some instances the cars are examined by commodity managers/handlers on the unloading tracks or at the unloading pits for loss or damage of lading and/or for leaks. In some cases it occurs where the car is spotted by the railroad. For answers to subparts (c) and (d), please see response to Interrogatory No. 9.

Interrogatory No. 11:

For each NAFCOA Member, please state whether the NAFCOA Member conducts or arranges for examinations or inspections of railcars *after unloading* (and before releasing or reloading the empty railcar) at each unloading facility identified for the NAFCOA Member in response to Interrogatory No. 1. If the answer for any NAFCOA Member is yes, please state:

- a. the location where the examination or inspection takes place (e.g., where the railcar is spotted by the railroad or where the car is loaded by the shipper, if the location of those events is different);
- b. who conducts the examination or inspection (e.g., supervisor, foreman, inspector, loading machine operator);
- c. whether the examination or inspection includes an inspections for Lading Residue or other substances on the exterior of the railcar and/or properly functioning, sealed, and secured valves and discharge ports; and
- d. the standard used to determine when the exterior of a railcar requires cleaning because of the presence of Lading Residue or other substances.

Response: NAFCOA shippers tend to load more cars than they unload. Inspections of empties at controlled facilities are conducted mainly by unloading personnel and/or other employees. Inspections generally are conducted at the unloading site or on a track where cars are set to await carrier removal. Please see answer to Interrogatory No. 9 for an explanation of external residue standards, etc.

Interrogatory No. 12:

For any affirmative answer to Interrogatories No. 8-11, please state whether the examinations or inspections are ever conducted at night or when visibility is poor; and if so, whether such an examination or inspection differs in its scope, particularly with respect to whether it includes an inspection for Lading Residue or other substances on the exterior of the railcar, and/or properly functioning, sealed, and secured valves and discharge ports.

Response: Inspections are conducted at night when necessary, and then in lighted areas.

The same procedures are observed at night as in daylight.

Interrogatory No. 13:

For each type of railcar used to transport each commodity identified in Interrogatory No 1, please state whether any employees of a NAFLA Member or other individuals hired by a NAFLA Member (e.g., independent contractors) make use of the railcar's safety appliances, such as ladders, handholds, brake handles, catwalks, etc.; and if so which safety appliances they use and for what reasons (e.g., use ladders to conduct pre-loading inspection of railcar).

Responses: Ladders on covered hopper cars sometimes are used by employees of the loading company to reach the top of the car for the purpose of opening loading hatches. Some hopper car loading facilities are equipped with elevated loading platforms from which workers can open roof hatches without using ladders or walkways. Ladders on tank cars are used by many, but not all, shippers to ascend the side of the car to the man-way dome, which serves as the loading inlet. Hand holds are used on occasion, and brake handles (which we assume to mean the apparatus that operates the hand brake) are occasionally used in the loading or unloading process to control the movement of cars. Management can and at its discretion does require the use of fall restraint devices before employees are allowed to ascend to a car top.

Interrogatory No. 14:

Identify all instances in which (a) UP, or (b) a railroad other than UP, rejected a railcar of a NAFLA Member due to:

- i. Lading Residue or other substances on the exterior of the railcar, including but not limited to the railcar's wheels, brakes, or safety appliances (such as ladders, handholds, brake handles, catwalks, etc.); or
- ii. Improperly functioning, sealed, or secured valves or discharge ports, or any other mechanical defect resulting in leakage of lading.

Response: Neither UP nor a railroad other than UP has rejected a rail car a NAFCa shipper member due to the criterion in subpart (i). Taking the term “rejected” to mean a refusal to place in an origin train for transportation, neither UP nor, we believe, any other railroad has rejected a railcar of a NAFCa shipper member at a loading point controlled by that member due to the reasons set forth in subpart (ii).

Interrogatory No 15:

Identify all instances in which (a) UP, or (b) a railroad other than UP, set out a railcar of a NAFCa Member at the shipper’s origin or destination or enroute due to:

- i. Lading Residue or other substances on the exterior of the railcar, including but not limited to the railcar’s wheels, brakes, or safety appliances (such as ladders, handholds, brake handles, catwalks, etc.); or
- ii. Improperly functioning, sealed, or secured valves or discharge ports, or any other mechanical defect resulting in leakage of lading.

Response: Complainant construes “set out” to be the equivalent of “rejected,” in which case please see answer to Interrogatory No. 14. No railroad has set out a railcar of a NAFCa member other than as explained elsewhere in these responses enroute due to Lading Residue. Cars occasionally have been set out enroute due to improperly functioning or secured valves or discharge ports.

Interrogatory No. 16:

Identify all instances in which (a) UP assessed a surcharge or switch charge to a NAFCa Member for setting a railcar out pursuant to the Subject Item, or (b) a railroad other than UP assessed a charge, fee, surcharge, penalty, or switching charge to a NAFCa Member due to:

- i. Lading Residue or other substances on the exterior of the railcar, including but not limited to the railcar’s wheels, brakes, or safety appliances (such as ladders, handholds, brake handles, catwalks, etc.); or

- ii. Improperly functioning, sealed, or secured valves or discharge ports, or any other mechanical defect resulting in leakage of lading.

Response: After making a reasonable effort to identify responsive records, NAFCA shipper members believe that there are no instances in which UP or any other railroad assessed a charge, fee, surcharge, penalty, or switching charge due to the instances specified in part (i) of this interrogatory. In 2004, one shipper had five tank cars stopped for residue on the cars' exteriors, and between 2009 and February 2011 had six car stopped on account of valve leakage. It is not known to that shipper what railroad charges, if any, were assessed.

In some instances involving tank cars, UP has called leaking valves or man-way covers to the attention of FRA employees. Examples of FRA documentation related to such events is provided contemporaneously.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1:

Produce all Documents identified, used, or referenced by NAFCA or a NAFCA Member in answering the interrogatories submitted by UP.

Response: Any such documents that have been located after a reasonable search are attached.

Request for Production No. 2:

For each affirmative answer to Interrogatory No. 2, produce any rules, guidelines, standards, or practices related to the loading or unloading of each commodity identified for that NAFCA Member in response to Interrogatory No. 1.

Response: See documents produced in response to Request No. 1.

Request for Production No. 3:

For each affirmative answer to Interrogatory No. 3 produce any rules, guidelines, standards, or practices related to the presence of Lading Residue or other substances at each loading or unloading facility identified for that NAFCA Member in response to Interrogatory No. 1.

Response: See documents produced in response to Request No. 1.

Request for Production No. 4:

Produce any reports or studies prepared or commissioned by any NAFCA Member related to the presence of Lading Residue or other substances at any loading or unloading facilities identified in response to Interrogatory No. 1 or on railcars loaded or unloaded by the NAFCA Member.

Response: NAFCA shippers have not prepared or commissioned such documents.

Request for Production No. 5:

Produce any directives, guidelines, or standards that instruct NAFCA Member employees or agents in conducting examinations or inspections of loading or unloading facilities for the presence of Lading Residue or other substances.

Response: Attached in response to Document Requests.

Request for Production No. 6:

Produce any directives, guidelines, or standards that instruct NAFCA Member employees or agents in conducting examinations or inspections of railcars.

Response: Please see Request No. 5.

Request for Production No. 7:

Produce any records of communications between UP and a NAFCA Member related to the presence of Lading Residue or other substances (a) on the ground or tracks where railcars are loaded or unloaded, or on the loading or unloading equipment, at any facility identified for that NAFCA Member in response to Interrogatory No. 1; or (b) on railcars loaded or unloaded by the NAFCA Member.

Response: Please see attached documents.

Request for Production No. 8:

Produce any records of communications between any railroad other than UP and a NAFCA Member related to the presence of Lading Residue or other substances (a) on the ground or tracks where railcars are loaded or unloaded, or on the loading or unloading equipment, at any facility identified for that NAFCA Member in response to Interrogatory No. 1; or (b) on railcars loaded or unloaded by the NAFCA Member.

Response: NAFCA is reiterating its burden objection to this request.

Request for Production No. 9:

Produce all documents related to the instances identified in response to Interrogatory No.

7.

Response: Please see response to Interrogatory No. 7.

Request for Production No. 10:

Produce all documents related to the instances identified in response to Interrogatory

Nos. 14 and 15.


Response: Please see responses to Interrogatory Nos. 14 and 15.

Request for Production No. 11:

Produce all documents related to the instances identified in response to Interrogatory No.

16, including records of the total costs charged to the NAFCA Member.

Response: Please see response to Interrogatory No. 16. UP has any responsive documents in existence.



Andrew P. Goldstein
Attorney for
North America Freight Car Association

Counsel's Exhibit D



**BNSF RAILWAY COMPANY
BNSF RULES BOOK 6100-A
(Cancels BNSF Rules Book 6100)**

**CONTAINING
RULES, REGULATIONS AND SPECIAL CHARGES
GOVERNING
THE TRANSPORTATION OF FREIGHT
ON
BNSF RAILWAY COMPANY
IN
THE UNITED STATES, MEXICO AND CANADA
AND
REGULATIONS GOVERNING CURRENCY EXCHANGE ON TRAFFIC
FROM, TO AND BETWEEN STATIONS IN CANADA
AND
CAR HIRE ON TRAFFIC TO OR FROM MEXICO**

For explanation of abbreviations / reference marks, see Item 110

ALSO APPLICABLE ON INTRASTATE TRAFFIC

ISSUED DECEMBER 29, 2000

EFFECTIVE JANUARY 1, 2001

Issued by Paul M. Anderson, P. O. Box 961069, Ft. Worth, TX 76161-0069

***Item 3040A - Charge - Sugar Covered Hopper Cars Rejected for Cleaning,
Cancelled Effective October 31, 2001***

Empty Covered Hopper Cars, last containing Sugar (STCC 20-621 and 20-629), rejected for cleaning will be subject to a charge of \$800 when the prior load was originated by the current shipper rejecting the car.

Item 3060 - Charge - Detention on Heavy Duty Flat Cars

For detention and use charges on heavy duty flat cars, see Tariff RPS 6740-Series.

***Item 3070 - Private Tank Cars Containing Lard/Grease/Tallow Unfit For Movement Over BNSF Rail Lines,
Yard Humps And Switch Yards Due To Residue on The Wheels, Excess Residue on the Car Exterior or
Mechanical Defects Resulting In Leakage of Lading During Rail Carrier Handling. Issued May 15, 2007 –
Effective June 4, 2007***

Upon release of loaded or empty railcars the car consignor/consignee has the responsibility to clean lading residue from the wheels and exterior, insure that the railcar is in proper mechanical condition for safe movement and properly sealed to prevent leakage.

1. AT ORIGIN/DESTINATION: If a railcar is found with lading residue on the wheels or exterior while at the origin or destination and after having been removed from the facility but still within the origin or destination terminal where loaded or unloaded, car will be returned to the facility for proper cleaning or repair. An intra-terminal switch charge at level found in BNSF Switch Book 8005-Series will be assessed for return of car to the facility. The consignor/consignee respectively will also be assessed a \$500 penalty charge per car requiring return to the facility for proper cleaning or repair.

2. IN TRANSIT: Railcars found in transit with lading residue on the wheels, car exterior or leakage of lading will not be humped and will be manually switched around the hump for proper entraining. An intra-terminal switch charge at level found in BNSF Switch Book 8005-Series will be assessed at each hump location where manual switching takes place. The consignor/consignee respectively will also be assessed a \$500 penalty charge per car for the manual switching performed at each hump location in the actual route of movement from origin to destination.

Assessment and/or payment of any of the foregoing charges will not relieve the consignor or consignee respectively of responsibility for property damage, cost of clean-up, personal injury or death attributable to the presence of lading residue on car wheels, car exterior or lading leakage due to mechanical defects.

Consignor/consignee is liable for and will defend and indemnify Railroad from all property damage, personal injury or death attributable to lading residue on wheels, car exterior or lading leakage due to mechanical defects even if Railroad does not detect that a railcar has lading residue on wheels, car exterior or lading leakage at the time of release to Railroad, while in transit or prior to handling over a hump.

Item 3240 - Charge - Hazardous Materials Destined to Canada

When a shipment of Hazardous Materials arrives at a border crossing between the United States and Canada without proper documentation in compliance with Canadian Transport Commission Regulations, including the Canadian Hazardous Materials Description and proper Canadian Hazardous Materials Placards attached to the car, and the shipment must be held by BNSF at the border crossing, a charge of \$88.00 per day, or portion of a day, will be assessed from the first 7:00 a.m. following notice to the consignor that the shipment is being held awaiting proper documentation and/or placards.

Demurrage and storage charges named in BNSF Demurrage Book 6004-Series will also apply.

Item 3250-A – Failure to Complete Unloading of Railcars – Issued: November 10, 2010 – Effective December 1, 2010 (Change in wording)

Upon arrival and placement of railcars for unloading at destination, consignee will be responsible for unloading equipment in a manner which does not damage equipment, and for releasing equipment in a condition suitable for reloading by another shipper. A Consignee who refuses or fail to remove all lading, dunnage blocking, bracing, strapping, debris or other material that was part of the inbound shipment, secure loading devices, and close doors will be subject to a penalty charge of \$500.00 per car plus the actual cost incurred by BNSF to remedy this situation.

Item 3251B – Covered Hoppers Unfit for Movement Due to Residue/Debris on the Exterior of the Car -Issued October 25, 2011 – Effective November 15, 2011 (Increase)

Upon release of railcars for loading/unloading, the consignor/consignee (as it may be acting through its loader/unloader) has the responsibility to clean lading residue and debris from the exterior of covered hopper cars prior to releasing from their facility. For failure to do so:

1. AT ORIGIN/DESTINATION: If found at the origin or destination or after release from the facility or railroad tracks where loaded or unloaded, a car is found to be dirty or unsafe for movement due to lading residue and debris on the exterior of the hopper car, at BNSF's discretion the car: (including the entire train if multiple cars) 1) will be rejected for movement; 2) will be returned to the facility; or 3) will be cleaned by BNSF. The consignor/consignee respectively will be assessed a \$500 penalty charge per car found to be unfit for movement plus actual costs incurred by BNSF to remove and dispose of the lading residue and debris. The applicable switch charges as found in BNSF Switch Book 8005-Series will be assessed if the car is returned to the facility or switched to a cleaning track.

2. WHILE IN TRANSIT: A car that is found to be dirty or unsafe for movement due to lading residue and debris on exterior of the hopper car will be switched to a cleaning track. The consignor will be assessed a \$500 penalty charge per car found to be unfit for movement plus actual costs incurred by BNSF to remove and dispose of the lading residue and debris. The applicable switch charges as found in BNSF Switch Book 8005-Series will be assessed to and from the cleaning track.

3. For shipments to Mexico, if a car is determined to be unacceptable for furtherance into Mexico after it has been interchanged to the Mexican carrier on account of Residue/Debris on the exterior of the car, a \$500 per car penalty charge plus actual costs incurred by BNSF and/or the Mexican carrier will be assessed to the consignee.

(Item continued on next page)

Item 3251B – Covered Hoppers Unfit for Movement Due to Residue/Debris on the Exterior of the Car (concluded)

4. Assessment and/or payment of any of the foregoing charges will not relieve the consignor or consignee respectively of responsibility for property damage, personal injury or death attributable to the presence of lading residue or debris which it has left on the exterior of railroad cars.

Item 3255 – Charge for Permanently Securing or Welding Apparatus to Heavy Duty Railcars – Issued February 14, 2007 – Effective March 7, 2007

Shippers and consignees are not allowed to make structural changes or weld anything to the heavy duty railcar, (see note 1) furnished by BNSF. If it is determined that a shipper or consignee has made structural changes or welded anything to the railcar, they will be charged a minimum of \$1,000 plus any additional cost associated with restoring the car to its former configuration or remedying the situation. Charges can be assessed by BNSF or its designated agent.

Note 1: Heavy duty railcar is identified by an AAR Mechanical Designation beginning with F4 as listed in The Official Railway Equipment Register.

Item 3260C - Charge - Failure to Complete Unloading of Sugar - Issued May 22, 2007 – Effective June 12, 2007

When Covered Hopper Cars of sugar, which are released from unloading, but have not been completely unloaded, are returned to the original shipping point for reasons other than carrier's error, the return will be subject to one of the following conditions, whichever is lower, with a minimum charge of \$750: (1) to the rate, minimum weight, and route applicable for such return movement; or (2) the rate, minimum weight, and route from the original point in effect on the date shipment is tendered for return, to the actual weight of the return movement or (3) if original shipment was made with per car rates, the return portion will be determined by applying percentage of the returned weight to the original per car rate.

Cars will be considered as completely unloaded if the sugar remaining in the car does not exceed three (3) percent of the weight of the last loaded movement.

Cars originating at Billings, MT; Lovell, WY; Longmont, CO; Sterling, CO; Rocky Ford, CO; Ft. Morgan, CO; Bayard, NE; Mitchell, NE; or Scottsbluff, NE may be returned to Billings, MT; Scottsbluff, NE; or Sterling, CO in lieu of the original shipping point. The return will be subject to the rate, minimum weight, or if original shipment was made with per car rates, the return portion will be determined by applying percentage of the returned weight to the original per car rate and route as though Billings, MT, Scottsbluff, NE, or Sterling, CO was the original shipping point.

Cars originating in Sidney, MT; Drayton, ND; East Grand Forks, MN; Hillsboro, ND; Redco, ND; Crookston, MN; Wilds, MN; Bingham, MN or Moorehead, MN may be returned to Sidney, MT, Drayton, ND; East Grand Forks, MN; Hillsboro, ND; Redco, ND; Crookston, MN; Wilds, MN; Bingham, MN or Moorehead, MN in lieu of the original shipping point. The return will be subject to the rate, minimum weight or if original shipment was made with per car rates, the return portion will be determined by applying percentage of the returned weight to the original per car rate and route as though Sidney, MT, Drayton, ND; East Grand Forks, MN; Hillsboro, ND; Redco, ND; Crookston, MN; Wilds, MN; Bingham, MN or Moorehead, MN were the original shipping point.

Counsel's Exhibit E



CSX Transportation Customer Rail Safety Guidebook

Effective June 1, 2010

CSX Transportation Customer Rail Safety Guidebook[®]



CSX Transportation Customer Rail Safety Guidebook[®]

Mission: To provide rail safety information to CSX Transportation customers about making informed decisions regarding safety on or about industry tracks.

The CSX Transportation *Customer Rail Safety Guidebook* is provided to assist our customers' safety program. Strong safety programs reduce the risk of injury and train accidents on or about industry maintained tracks. Approximately seventy-five percent of train accidents that happen on industry tracks are the result of track problems, objects on the track and product spillage, ice, snow or mud that accumulates and fouls the rail wheel flange ways.

Education, communication, awareness and prevention are necessary elements of a successful safety program. Rail safety information is the first step in providing a safe place to work for everyone.

This educational guidebook is presented for customers that do not move cars inside their facilities.

CSX Transportation Customer Rail Safety Guidebook[®]

Safety Overview

Safety through Teamwork

Workplace safety is a core value at CSXT. CSXT strives to arrive at the customer siding without damage to the product, in a timely manner while always protecting the personal safety of our employees, customer employees and the public. It is imperative that rail equipment is handled safely, is properly secured, track is maintained to standard which includes minimal side and overhead restrictions and the surrounding property is absent of debris material, spillage, and accumulation of snow and ice that can adversely impact walking conditions. The number one cause of all personal injuries to railway employees on industry tracks is slips, trips and falls.

A strong safety program in railway operations contains five key areas of focus.

1. Track Maintenance:

Wide Gage, Broken Rails and Switch related problems are the leading causes in train accidents on industry tracks.

2. Winter Plan Focus:

- Inspect the siding prior to service.
- Keep all switches free of snow and ensure correct drainage.
- The accumulation of snow and ice on and around the tracks and in the flange ways also may also cause train derailments in industries.
- Keep flange ways of tracks which run through private or public roads clear of ice at all times.
- Clear snow accumulation caused by vehicles crossing over the tracks.
- Clear snow which has slipped from adjacent roof tops onto the siding track.
- During severe snow storm conditions, call your Customer Service Center representative to advise that your facility has been cleared of snow. This will help protect timely service during severe weather conditions.
- The specific responsibility for snow removal is defined in your private siding agreement. In general, the customer is responsible for snow removal up to the main track switch.

CSX Transportation Customer Rail Safety Guidebook[©]

3. Spring Plan Focus:

In the spring, it is important to have a track maintenance contractor inspect your track/facility and schedule routine repairs and maintenance. Planned proactive, preventative work reduces the potential for derailments and injuries.

4. Movement and Securement of Equipment:

Moving and securing railcars and equipment is one of the most important aspects of railway safety. For customers who are qualified to move rail equipment, it is critical that safety rules related to moving equipment be followed.

*Know the route is clear
Check switch points
Protect the shoving movement
Not leaving cars fouling other tracks
Stopping the movement
Properly applying handbrakes*

Please review these important safety points with your employees who are responsible for handling, moving and securing railway equipment and ensure they understand each safety principle.

5. Restricted Clearance Hazards:

One of the potential risks to railroad and industry employees in customer facilities is restricted clearances. It is crucial that your facility is free of side and overhead clearance restrictions as much as practicable. Where restrictions exist, the location must be protected with warning signs and communicated to CSX Transportation.

6. Spillage/Wheel Contamination:

Wheel contamination from consumer products like flour, canola oil, cornstarch and other similar substances can cause serious incidents at our hump operations and reduce the rail cars braking effectiveness. If railway equipment has rolled through a contaminated area, you must ensure the wheels are cleaned of any contamination before being released to CSXT.

RECIPE FOR SUCCESS

Focusing on safety action plans will lead to safety success. Thank you in advance for your commitment to safety.

Counsel's Exhibit F



K.B. Dorsey
Executive Director - Tank Car Safety

July 11, 2008

CASUALTY PREVENTION CIRCULAR

(CPC-1190)

**SUBJECT: Pamphlet 34 Recommended Methods for the Safe Loading and Unloading of
Non-Pressure (General Service) and Pressure Tank Cars** T9.2

TO THE MEMBERS AND PRIVATE CAR OWNERS:

At the request of the Haz Mat (BOE) Committee, Pamphlet 34 has been reviewed and changes made to bring it inline with current best industry practices. The objective of the pamphlet is to promote the safe loading, unloading, and preparation for transportation of tank cars.

The revised pamphlet is included in this circular and is in effect as of the publication date of this circular. The revision is shown in underlined text. Under the provisions of Standard S-050, which may be found on the TTCL web site (AAR.com), this circular reflects the final action on this matter.

Respectfully Submitted,

K.B. Dorsey

PAMPHLET 34

Recommended Methods for the Safe Loading and Unloading of Non-Pressure (General Service) and Pressure Tank Cars

Preface

This document presents general guidelines for the selection of tank cars and recommended procedures for loading and unloading of the cars. It is not a complete and comprehensive set of methods, instructions or procedures applicable for all situations and car types. Each user company is encouraged to develop specific procedures using this document as a general guide where it applies. A particular location may require the use of additional or different precautions for the loading or unloading operations to be performed safely. Appropriate individual company procedures and applicable government requirements, including U.S. Department of Transportation (DOT) Hazardous Materials or Transport Canada (TC) Transportation of Dangerous Goods regulations, must be followed.

All repairs must be performed by properly Certified or Registered Tank Car Facilities. Experienced, trained personnel who are knowledgeable of the safety requirements and loading/unloading operations must be used. For loading and unloading of Hazardous Materials/Dangerous Goods, these knowledgeable persons must be designated as and trained as "HazMat"/or qualified employees per government regulations. Loading/ unloading personnel must be responsible for compliance with all company procedures and regulatory requirements during the complete operation. See regulatory references at the end of this document.

CAUTION: Since the loading and unloading of tank cars involves the opening of valves, fittings, flanges, caps, plugs and other closures there is always a possibility of product spillage or leakage. While this should be minimized the loader/unloader must be prepared to capture, collect and dispose of any spilled or leaked product in an environmentally-acceptable manner

Appropriate Personal Protective Equipment (PPE) should be worn throughout the loading or unloading procedure.

A. General Instructions for Loading and Unloading

1. The car must have the hand brakes set and the wheel(s) blocked against movement before any loading/unloading activities are started.
2. When the car is positioned for loading or unloading, securely block access to the track by use of derails, aligned and locked switches, bumper blocks or other such apparatus.
3. While a car is connected for loading/unloading, blue caution signs (sometimes known as "blue flags") must be placed on the track as required by regulations and company procedures.

4. Before loading/unloading, inspect the car for damage and the presence of a Defect Card. If either is found, contact the car owner for further instructions before loading.
5. Safety equipment such as safety showers and eye wash stations should be verified to be present and operational before conducting loading/unloading activities.
6. Proper tools should be used for loading/unloading operations. They must be clean and in proper condition at all times.
7. Tank car tanks containing flammable or combustible gases or liquids should be electrically grounded and bonded during loading and unloading operations. Grounding and bonding of cars carrying other commodities is also encouraged.
8. All loading/unloading inspections should be properly documented through a check list or similar method.
9. The loading/unloading area should have adequate lighting and be free of obstacles or unnecessary equipment.
10. During the loading/unloading process, cars must be attended by trained personnel or monitored by an approved monitoring system. Do not allow the loading/unloading operation to stand unattended or unmonitored while connections are attached to the car. If necessary to discontinue operations for a period of time, all valves must be closed, all connections removed and the car must be prepared as if ready for transportation. However, operations can be discontinued on an attended or monitored car by closing valves on the car and closing valves at the facility without disconnecting hoses.
11. When operating gauging devices, top operated bottom outlet valves, or any other top fittings or closures, loaders/unloaders should not:
 - 11.1 Stand directly above or place any part of their body directly above the gauging device, valve, fitting, or closure.

NOTE. An excess flow valve is a device which closes automatically against the flow of the contents of the tank in case the external closure valve is broken off or removed in transit. Excess flow valves are neither designed, nor intended, to stop the flow of a tank car's contents in the event of a failure of a loading/unloading system's piping or hoses.

12. Prior to attempting to move the gage rod loosen the packing gland nut slightly. Do not use a wrench for additional leverage to raise and/or lower sticking gage rods. Remember to retighten the packing gland nut prior to offering for transportation.

B. Loading a Tank Car

Before Loading a Tank Car:

1. Ensure that general procedures in Section A are followed.
2. Shippers must ensure that the tank car selected is authorized for the commodity being loaded. The tank car must comply with DOT or TC regulations and/or AAR's current Manual of Standards and Recommended Practices, Section C-Part III. (Specifications for Tank Cars, Specification M-1002).
3. The tank car must be of sufficient capacity, both by weight and volume to contain the quantity of the product being loaded. Applicable requirements such as outage, filling density or weight restrictions must be met. Consult the appropriate regulations/company policies for specific filling requirements.
4. Inspect the car for overall integrity and any visible damage. All safety appliances must be in proper condition. The car must show no sign of leakage and have no visible defects.

NOTE During the inspection of the car, look for any items that are not typical of standard tank car designs as they may indicate a security breach – follow company-specific procedures or guidelines if such items are found

5. Qualification stencils should be reviewed to confirm that the car is not overdue for any tests, qualifications or inspections. Do not load a car with overdue tests, qualifications or inspections.
6. All fittings, valves, gaskets and fasteners must be in proper condition, *i.e.* not corroded, torn, worn, stripped or otherwise damaged. Materials contacting the lading must be compatible with the product being loaded into the car.
7. Unless the car is cleaned/purged, ensure that the residue in the car is compatible with the product being loaded into the car. Do not load a car that has an unidentified residue.
8. If equipped with a safety vent, the rupture disc must thoroughly inspected. If equipped with a pressure relief valve, the valve must be inspected to ensure no debris is in its discharge area. If a combination pressure relief device is present each detection device (including, for example, telltale indicator or needle valve) should be checked to determine the integrity of the rupture disk. These devices must be closed prior to transportation.
9. If equipped with bottom outlet valve(s), the outlet cap(s) and/or plug(s) must be removed to check the bottom outlet valve for leakage. If equipped with an auxiliary valve, open the auxiliary valve with its cap/plug removed to check the bottom outlet valve for leakage. Upon removal of the plug and/or cap or opening of the auxiliary valve, be prepared for the possible release of material from the outlet leg and from a leaking valve.
10. If equipped with a Top Operated Bottom Outlet Valve (BOV), if practicable, loosen the top packing nut and operate the valve to verify proper operation. Depending on findings,

close the valve and tighten the top packing nut or stop the operation and repair the valve before loading the car.

CAUTION: This process may allow material to drain into the outlet leg of the car between its BOV and auxiliary valve.

11. If equipped with a Bottom Operated Bottom Outlet Valve, if practicable, operate the bottom outlet valve to verify its proper operation. Depending on findings, close the valve and lock the handle in the closed position or stop the operation and repair the valve before loading the car.

CAUTION: This process may allow material to drain into the outlet leg of the car between its BOV and auxiliary valve.

12. The bottom outlet plug and/or cap must remain off its fitting during entire loading process to ensure that the bottom outlet valve is not leaking. If equipped with an auxiliary bottom outlet valve, the auxiliary bottom outlet valve must be left open with the plug removed during the entire loading process to ensure that the primary bottom outlet valve is not leaking.
13. If equipped with a heating system, thoroughly inspect the exposed parts of the system. If the car is equipped with interior heater coils, remove the caps, be prepared for release of material and check for leaks prior to loading the car.
14. If so equipped, remove thermometer well cap and the magnetic gage rod cover cap slowly to determine if there is a leak. Inspect the o-ring on the thermometer well fitting and the magnetic gage rod body and replace as required. Verify that adequate ethylene glycol/anti-freeze mixture is present in the thermometer well to allow for taking an accurate product temperature reading.
15. Where applicable, connect the vapor valve to a recovery system. Open the vapor valve for displacement of the vapor before opening any product valve or manway.

During Loading a Tank Car

16. During loading continually monitor the car for any signs of leakage.
17. Ensure adequate outage space remains in the car when loading is completed to prevent overloading by volume or by weight and to allow expansion in transit. Refer to applicable regulations for correct outage, filling density and other weight restrictions for the commodity loaded.

After Loading a Tank Car

18. When loading is complete re-check the car for any signs of leakage. If there are any signs of leakage and if the leak cannot be stopped, the car must not be offered for transportation.

19. Document, per company procedures, the outage level, seal numbers and product identification information.
20. Close all valves after car is loaded. Verify there is no detectable leakage from valves, flanges, threaded connections and packing glands. Secure all plugs and outlet caps with a suitable tool. Use non-sparking tools if required by company procedures. (PTFE, Teflon®, paste or not more than three wraps of PTFE tape have been found to be acceptable materials for use in sealing plugs and caps.) {Note: In most cases exterior coils should not have caps}. Do not offer the car for transportation if any leaks are found!

NOTE: Association of American Railroads Interchange Rules require that any leaky tank, regardless of the commodity carried, shall be stenciled, "LEAKY TANK, DO NOT LOAD UNTIL REPAIRED", in 3-inch letters on each side adjacent to the car number, and the location of the leak must be identified by an "X". In addition, the car must be stenciled or decaled "HOME SHOP FOR REPAIRS DO NOT LOAD."

21. When securing a manway, make sure the gasketing material is compatible with the product and that it is properly aligned. Tighten the manway bolts using the appropriate star pattern and company procedures. Consider lubricating manway I bolts to maintain torque and conditions of the bolts.
22. After loading, apply and hand-tighten magnetic gauge cover and thermometer well cap.
23. After the tank car has passed the appropriate leak test, top unloading valve handles that are not enclosed in a protective housing, must be removed before the car is offered for transportation.

NOTE: All valves, fittings, closures, plugs, caps, and fasteners are to be checked for tool tightness even if the item was not utilized during the unloading process (thermometer and magnetic gauging device covers with o-rings are to be hand tight, not tool tight.)

24. Product spillage on the tank exterior must be removed.
25. The car must be properly placarded and marked before it is offered for transportation.

C. Unloading a Tank Car

Before Unloading a Tank Car:

1. General procedures in Section A should be followed.
2. All fittings seals should be examined before removing them for evidence of tampering.
3. Verify that valves and fittings are closed before removing plugs, caps and flanges.
4. Any dirt or debris should be removed from the fittings before opening them.
5. Before unloading, verify the contents of the tank car and of the receiving vessel for compatibility.

6. If the tank car is a general service car, relieve tank pressure by one or more of the following methods:
 - 6.1 Slowly opening the vent valve.
 - 6.2 Carefully open the fill hole cover or hinged manway cover. If using the manway cover for pressure relief, use caution when loosening bolts. The bolt(s) by the handle are the safety bolt(s). Loosen the safety bolt(s) by one or two turns at a time, and then loosen the remaining bolts.
 - 6.3 If necessary, vent to a scrubber or vapor collection system.

NOTE: *C AUTION should be exercised because any tank car may be under pressure.*

NOTE: *The vacuum relief valve should not be used to vent pressure*

NOTE: *Atmospheric venting may create a safety and/or environmental hazard.*

7. Venting is not necessary if the tank car is to be pressure-unloaded. However, a means to prevent over-pressure must be provided.

If Heater Coils Are Needed For Unloading:

8. If equipped with interior heater coils, remove heater coil caps and check for leakage before connecting steam hoses.
9. Connect steam hoses to inlet connections of the heating system. Use a shut-off valve to control the steam flow. The tank should be vented before and during steaming to prevent excess pressure build-up.
10. Caution must be taken when applying steam to the system. Apply steam slowly until steam is observed at the heater coil outlet. Rapid expansion of the coils could cause breakage of the steam system. If steam is bubbling in the product, the interior steam coil is broken. Shut off the steam. If there is a dual system on the car, use the other bank. Report defects per company procedures to the shipper of the product and/or to the car owner.
11. Steaming operations should be carefully monitored to ensure the product or container does not become over-heated.
12. If the bottom outlet valve is steam jacketed, steam should be applied to the outlet steam jacket. *DO NOT apply steam directly into the outlet chamber'*
13. When unloading general service tank cars with protective linings it is important to remember that steaming of a partially filled tank car may damage the coating due to localized overheating. Once unloading is in process, steam pressure should be reduced or shut off to the car to avoid damaging the protective lining.

Unloading

14. When unloading through the bottom outlet, with the manway open, take care to prevent contamination of the product or, in the case of flammable materials, sparks or other sources of ignition.
15. Verify that the bottom valve is closed before loosening bottom outlet plug or cap.
16. Be prepared to collect any materials trapped in the bottom outlet leg upon loosening of the cap/plug assembly. Slowly loosen the outlet cap. If more than 2 - 3 quarts are collected in the containment system, there is a probability of bottom outlet valve leakage. Do not remove the cap completely. If the valve continues to leak tighten the cap/plug assembly. Inform the tank car owner of the leaking condition and request what action to take.
17. Before opening the unloading valves, securely attach the transfer system and perform a leakage test, if possible.
18. If a non-pressure tank car is being unloaded by pumping through the bottom outlet valve or top-mounted liquid valve, a means of preventing vacuum (which may cause a collapse of the tank) must be provided. Relieve all pressure used to unload the car, except for those products that may have a nitrogen padding applied. A warning should be applied in the manway area to indicate when nitrogen or other non-life supporting gas is present as a pad.

After Unloading a Tank Car

19. If the steam supply is still active, shut it off and remove connections. Check the heating coils for water removal and check for leaks per company procedures. If leaks are found, notify the car owner and/or the shipper.
20. Verify that all valves are closed.
21. Verify that all unloading connections are removed.
22. Secure all fittings, valves and openings in the appropriate manner. (All plugs and outlet caps must be secured with a suitable tool. Use non-sparking tools per company procedures when required.) Exceptions: Thermometer and magnetic gauging device covers with o-rings are to be hand tight, not tool tight.

NOTE All valves, fittings, closures, plugs, caps, and fasteners are to be checked for tool tightness even if they were not utilized during the unloading process again with the exceptions of thermometer and magnetic gauging device covers with o-rings that are to be hand tight, not tool tight.)
23. If the manway was opened during the operation, be sure to inspect the manway gasket for damage, deterioration and proper alignment. Tighten the manway bolts using the appropriate star pattern and torque values per company procedures.

24. If equipped with a safety vent, the rupture disc must be examined for integrity, proper burst-pressure rating and condition. If the tank car is to be reloaded at the same facility one inspection of the rupture disk may be adequate. The key requirement is that the rupture disk be thoroughly inspected per federal requirements prior to offering for transport with the following exceptions:
- 24.1 Residue of some class 8 and 9 materials by Special Permit in the USA and
24.2 Most/all residue cars in Canada except class 2.
25. Relieve all pressure used to unload the car, except for those products that may have a nitrogen padding applied. A warning should be applied in the manway area to indicate when nitrogen or other non-life supporting gas is present as a pad.
26. All cars (except class 9 material under certain circumstances) must be properly placarded and marked before being offered for transportation.
27. Ensure proper documentation for transportation is available.
28. Visually inspect the car to verify that no obvious defects are present.

NOTE. A car containing the residue of a dangerous good or hazardous material must be offered for transportation in the same condition as a car loaded with that material. It must be leak free, load placarded, marked, closed with seal present if required and properly documented.

D. Additional Information – Websites

AAR/TTCI NAR Website - <http://nar.aar.com>

BOE/TTCI Website – <http://boe.aar.com>

Federal Railroad Administration (FRA) - <http://www.fra.dot.gov/>

DOT Hazmat Safety Homepage - <http://hazmat.dot.gov/>

Transport Canada (Dangerous Goods, TDG) - <http://www.tc.gc.ca/tdg/menu.htm>

Transport Canada (Rail) - <http://www.tc.gc.ca/rail/menu.htm>

E. Additional Information –Regulations References

Hazard Materials Employee Training – 49 CFR 172.704

Dangerous Goods Employee Training – TDG Clear Language Regulations, Part 6

Empty Packaging – 49 CFR 173.29

Examination Before Shipping - 49 CFR 173.31(d) or CGSB 43.147, section 30.16

Tank Car Unloading (transloading only) – 49 CFR 174.67

Tank Car Loading and Unloading in Canada – CGSB 43.147, section 30.14

Stencil Leaky Tank – Field Manual AAR Interchange Rule 1, 3.e. and Rule 80 B. 6.

Hinged Manway Covers – AAR MSRP, M-1002. Appendix D.

Counsel's Exhibit G

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Counsel's Exhibit H

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Counsel's Exhibit I

Sample #3...Tankcar Loading Checklist

Car No.:	Date:
Product	Tank:

Initial YES	Initial NO	A. INITIAL CHECK
		A1. Are you wearing your Personal Protective Equipment (PPE)?
		A2. Is the rail switch or derailer applied to isolate the area (both directions if applicable)?
		A3. Is the "STOP-Tankcar Connected" sign installed? (Blue flag)
		A4. Is the hand brake set?
		A5. Are the wheels chocked so the tankcar can not move in either direction?
		A6. Is the car number correct?
		A7. Is residue compatible with product being loaded?
		A8. Have you checked for a defect card or bad order tag? If found, notify supervisor.
		A9. Are tank ladders, handrails, grab irons and top platform safe and undamaged?
		A10. Tank test date:____(Year)____Due Safety valve test:____(Year)____Due
		A11. Heater coil test:____(Year)____Due (interior coiled cars only)
		A12. If tankcar is lined, is lining acceptable?
		A13. If equipped, are the vapor and liquid lines properly plugged, secured and chained?
		A14. Is protective housing cover operative and able to be properly secured and sealed?
		A15. Is manhole gasket or O-ring in good condition?
		A16. Are manhole bolts operative?
		A17. Is the bottom valve cap and plug properly connected to the car with chains?
		A18. If equipped, was 2" auxiliary valve removed from bottom of tankcar and inspected?
		A19. Has the bottom outlet cap been removed or auxiliary valve opened?
		A20. Is bottom outlet valve in the closed position with handle locked in place with a pin?
		A21. Is there a containment area or container available for any leaking material?
		A22. For FLAMMABLE products, are there No Smoking, Burning and Welding signs in the area?
		A23. For FLAMMABLE products, is grounding lead connected directly to the tank?
		A24. For FLAMMABLE products, are spark proof tools available and in use?

B. LOADING

		B1. Are all loading lines able to be properly secured?
		B2. Are steam coil caps removed and connected to the car with chains? (Interior coiled cars only)
		B3. Has bottom outlet valve been checked for leakage?
		B4. Are all valves securely closed?
		B5. Has sufficient vapor space (Outage) been left for product expansion during transit?

C. AFTER LOADING

		C1. Is manway gasket in place and in good condition?
		C2. Are manway cover bolts wrench tight? (Star pattern)
		C3. Are all valves securely closed and pins/chains attached?
		C4. Is protective housing secured in locked closed position? Seal No. _____
		C5. Is bottom outlet valve cap gasket in place and in good condition?
		C6. Is bottom outlet valve cap or plug secured and wrench tight?
		C7. Have steam coil caps been reattached and tightened? (Interior coiled cars only)
		C8. Are the proper placards (4) in place for shipment? UN No.: _____
		C9. Has car been checked for spillage? If spillage occurred, has it been removed?
		C10. Have grounding leads been removed? (If applicable)
		C11. Are walkways locked in up position?
		C12. If applicable, is hazard material tankcar pull sheet filled out and in box?
		C14. Are wheel chocks removed?
		C15. Is final walk around inspection completed?
		C16. Are "STOP – Tank Car Connected" signs removed and switch/derailer unlocked?

I have inspected this car and find it secure and ready to be shipped and that defects noted have been corrected or proper notification has been made.

TRACKMAN: _____

I have reviewed the completed checklist and all defects noted below have been corrected or proper notification has been made.

SUPERVISOR: _____

Comments (please be specific):

Sample #4 Tankcar Unloading Checklist

Car No.:	Date:
Product:	Tank:

Initial YES	Initial NO	A. INITIAL CHECK
		A1. Are you wearing your Personal Protective Equipment (PPE)?
		A2. Is the rail switch or derailer applied to isolate the area (both directions if applicable)?
		A3. Is the "STOP-Tankcar Connected" sign installed? (Blue flag)
		A4. Is the hand brake set?
		A5. Are the wheels chocked so the tankcar can not move in either direction?
		A6. Is the car number correct?
		A7. Have you checked for a defect card or bad order tag? If found, notify supervisor.
		A8. Are tank ladders, handrails, grab irons and top platform safe and undamaged?
		A9. Tank test date:____(Year)____Due Safety valve test:____(Year)____Due
		A10. Heater coil test:____(Year)____Due (interior coiled cars only)
		A11. If equipped, is protective housing cover operative and able to be properly secured and sealed?
		A12. If equipped, are the vapor and liquid lines operable and plugs secured and chained?
		A13. Is there any evidence of leakage from the top or bottom of the car?
		A14. Is there a containment area or container available for any leaking material?
		A15. For FLAMMABLE products, are there No Smoking, Burning and Welding signs in the area?
		A16. For FLAMMABLE products, is grounding lead connected directly to the tank?
		A17. For FLAMMABLE products, are spark proof tools available and in use?

B. UNLOADING

		B1. Are all unloading lines able to be properly secured?
		B2. If applicable, are steam connections secured?
		B3. For bottom unloading, has the manway been opened and secured?

C. AFTER UNLOADING

	C1.	Is manway gasket in place and in good condition?
	C2.	Are manway cover bolts wrench tight? (Star pattern)
	C3.	Are all valves securely closed and pins/chains attached?
	C4.	Is protective housing secured in locked closed position? Seal No. _____
	C5.	Is bottom outlet valve cap gasket in place and in good condition?
	C6.	Is bottom outlet valve cap or plug secured and wrench tight?
	C7.	Have steam coil caps been removed and left hanging? (Interior coiled cars only)
	C8.	Are the proper placards (4) in place for shipment? UN No.: _____ (If applicable)
	C9.	Has car been checked for spillage? If spillage occurred, has it been removed?
	C10.	Have grounding leads been removed? (If applicable)
	C11.	Are walkways locked in up position?
	C12.	Are wheel chocks removed?
	C13.	Is final walk around inspection completed?
	C14.	Are "STOP – Tank Car Connected" signs removed and switch/derailer unlocked?

<p>I have inspected this car and find it secure and ready to be shipped and that defects noted have been corrected or proper notification has been made.</p> <p>TRACKMAN: _____</p>	<p>I have reviewed the completed checklist and all defects noted below have been corrected or proper notification has been made.</p> <p>SUPERVISOR: _____</p>
<p>Comments (please be specific):</p> 	

Counsel's Exhibit J

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Counsel's Exhibit K

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
BNSF WEIGHING BOOK 9300-A
(Cancels BNSF Weighing Book 9300)

NAMING
RULES AND CHARGES
GOVERNING
WEIGHING OF CARLOAD FREIGHT AND EMPTY CARS
AND
THE USE OF CONSIGNOR AND CONSIGNEE WEIGHTS
AT ALL POINTS
ON THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

ALSO APPLICABLE ON INTRASTATE TRAFFIC

ISSUED AUGUST 21, 2001

EFFECTIVE OCTOBER 1, 2001

BNSF WEIGHING BOOK 9300-A

Item 1200B – Excessively Loaded Cars, Issued March 8, 2002 – Effective April 1, 2002

- A. An excessively loaded car is defined as a rail car for which either the net weight (actual weight of freight including all other materials incidental to the movement of the goods) is in excess of the car's authorized load limit (as listed in Universal Machine Language Equipment Register- UMLER), or the gross weight (combined weight of railcar and freight including all other material incidental to the movement of the goods) is in excess of the track weight limitations at any point along the route of movement
- B. Shipper is responsible for the removal and disposal of the excess portion of the lading of the car. BNSF will not be responsible for damaged goods or loss of lading resulting from the process of removing excess portion and BNSF does not assume responsibility for the proper loading or unloading of any lading into or out of a car containing excessive lading. All charges referred to are published as a deterrent to the unsafe practice of overloading rail cars and are not connected in any way with the line-haul transportation charges. These charges are NOT freight or "or other lawful charges" within the meaning of Section 7 of the bill of lading, and the execution of Section 7 will not in any way relieve the shipper from the responsibility for the charges referred to
- C. If Shipper does not produce a certified weight document, in a form acceptable to BNSF, indicating that the excess tonnage has been removed from each car, charges for weighing each excessively loaded car, as found in item 900 of this book, including applicable switch charges as found in BNSF Switch Book 8005-Series, will be assessed against the shipper in addition to all other charges named in this book.
- D. CARS FOUND TO BE OVERLOADED
 - 1. AT POINT OF ORIGIN: If found at origin after having been removed from industry or railroad tracks where loaded, car will not be permitted to go forward. Shipper will be notified and required to transfer the excess weight from the car. Shipper will be assessed the applicable switch charges as found in BNSF Switching Book 8005-Series. Cars found to contain excess lading at origin will remain on continuous demurrage under the provisions found in BNSF Demurrage Book 6004-Series or BNSF Private Car Storage Book 6005.
 - 2. WHILE IN TRANSIT: A car that is found to be overloaded in excess of 5,000 pounds will not be allowed to go forward until the condition is rectified. Shipper will be notified via telephone, fax or by an electronic means and required to unload the excess lading at the operating convenience of the BNSF.
 - a. Cars containing lading in excess of 2,000 pounds above the load limit as listed in UMLER (except cars containing hazardous material or grain and grain products) will be subject to a surcharge of \$500 per car for each weighed overloaded car in addition to applicable freight charges.
 - 1. Cars containing hazardous material in excess of 1,000 pounds will not be allowed to move en route without reduction.

BNSF WEIGHING BOOK 9300-A

Item 1200B – Excessively Loaded Cars (Continued)

- 2 Overloaded cars of grain and grain products will be handled pursuant to paragraphs E and F below.
 - b If the shipper fails or refuses to arrange to have the excess lading removed from each car within 120 hours from the date and time of notification, BNSF may, at its discretion, arrange for removal and disposal of the excess portion to allow the car to continue safely to the destination. The shipper will pay actual cost of removal and disposal to the party reducing the car.
 - c If Shipper/consignor has not commenced reducing the excess portion from each car after 240 hours from the date and time of notification, the lading in the car will have been deemed abandoned and BNSF may, at its discretion, reserve the right to confiscate the lading. At the option of BNSF Freight Claims Department, private sale of the lading will commence and all charges accrued (switching, weighing, demurrage, reduction and disposal expenses) resulting from an excessively loaded car, will be deducted before submitting any proceeds of sale to the consignee/consignor of record.
- E. With regards to Grain and Grain Products, as defined in BNSF 4022 and 4023, if cars are found to contain excessive lading en route and are part of a permitted unit grain train, at the option of BNSF, the entire grain train will be held for reduction of overloaded car(s). The excessive lading car(s) will be placed on demurrage for the account of the shipper/consignor from the first 12:01 A.M. after notification of the excessive weight in car(s) until the excessive weight has been reduced to the authorized gross weight on rail. This is in addition to switching and weighing charges that may be applicable.
- F With regards to Grain and Grain Products, as defined in BNSF 4022 and 4023, BNSF reserves the right to request origin weights from origin loaders or unloading weights from destination unloaders for the purpose of determining whether cars were loaded in excess of the authorized load limit. Actual individual certified car weights or batch weights (using the formula set forth below in the next paragraph) would be used. Freight rates will be surcharged in the amount of \$500 per car loaded in excess of the authorized load limit and moved from origin to destination.

When the weight of individual cars is not available due to batch weighing, the following formula will apply. The load limits of all the cars in a batch will be added together, in addition to an allowance of 2,000 pounds per car, for each car in the batch. The load limit of the involved cars plus the allowance will be subtracted from the batch weight. If the result is greater than zero, the \$500 per car surcharge will apply to each car in the batch.

(Item continued on next page)

BNSF WEIGHING BOOK 9300-A

Item 1200B – Excessively Loaded Cars (Concluded)

Where there is a disagreement as to the weight of the lading, only weights from a scale currently certified by the Federal Grain Inspection Service or certified according to the National Bureau of Standards Handbook No. 44 will be considered. Weights subject to supervision will govern over other scale weights where applicable. In no case will claims involving a weight disparity of less than 1,000 pounds from the original ascertained weights be entertained.

END



CSXT 8100

(A) ORIGINAL PAGE XI-A-1

**SECTION XI-A
OVERLOADS**

**SECTION XI-A
OVERLOADS**

(Not Applicable on Coal (STCC 11) or Coke, the Direct Product of Coal (STCC 29 914). For Applicable Provisions on these Commodities, see Tariff CSXT 8200.)

(A) - Increase

ISSUED MARCH 16, 2000

EFFECTIVE APRIL 15, 2000

CSX TRANSPORTATION
Marketing Services
6737 Southpoint Drive South
Jacksonville, FL 32216



CSXT 8100

2nd REVISED PAGE XI-A-2
Cancels 1st REVISED PAGE XI-A-2

**SECTION XI-A
OVERLOADS**

GENERAL APPLICATION – ITEM 11000

- (C) When a car is found to be overloaded (whether it exceeds the car's or the rail's limit) the Shipper will be notified and given an opportunity to take corrective action. CSX will apply a charge of \$750 for each overloaded car.

Following corrective action cars will be handled as follows (if requested, CSXT may make the necessary adjustments – this service is not a common carrier obligation and will be charged for at prevailing rates, separate and apart from the transportation charges):

1. The excess lading may be removed, with the remaining lading forwarded to the original billed destination, at the price from the original billed origin, on the remaining weight.
2. The excess lading may be placed in another car and both cars forwarded to the original billed destination. Charges to be assessed are as follows:

As to shipments rated on other than per-car charges:

At the price from the original billed origin, on the combined weight of both cars, with the excess car subject to a 10,000 pound minimum weight

As to shipments rated on per-car charges:

The original car will be charged the per-car price from the billed origin.

The car carrying the excess will be charged at 28% of the per-car price on the original car, with charges being rounded to the nearest whole dollar

3. The entire lading may be transferred to another car if such transferal results in the car being accepted for further movement. Freight charges will be those on the weight of the reloaded car, from original billed origin, to the original billed destination
4. The excess lading may be placed in another car and returned to the original billed origin. The remaining lading in the original car may be forwarded to the original billed destination, at the price from the original billed origin, the charge will be\$424.00

(C) - Change in wording – Replaces formerly published paragraphs A. and B.

ISSUED JUNE 8, 2011

EFFECTIVE JULY 1, 2011

CSX TRANSPORTATION
Marketing Services
6737 Southpoint Drive South
Jacksonville, FL 32216

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1ST REVISED TITLE PAGE

NORFOLK SOUTHERN RAILWAY COMPANY

VISION BE THE SAFEST, MOST CUSTOMER-FOCUSED AND SUCCESSFUL TRANSPORTATION COMPANY IN
THE WORLD

FREIGHT TARIFF

NS 8002 - A

(For Cancellation, See Page 12)

LOCAL AND JOINT FREIGHT TARIFF

PUBLISHING

RULES AND CHARGES ON

ACCESSORIAL SERVICES

AT STATIONS ON

NORFOLK SOUTHERN RAILWAY COMPANY

ISSUED DECEMBER 1, 2010

EFFECTIVE MARCH 1, 2011

ISSUED BY
D. D. Fisher, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY
110 Franklin Road, S. E.
Roanoke, VA 24042-0047

NS 8002-A

5TH REVISED PAGE 39

SECTION 5
RULES AND CHARGES GOVERNING OVERLOADED CARS

ITEM 5000

RULES GOVERNING OVERLOADED CARS
(Not applicable on cars loaded with Coal, Coke or Iron Ore)

- ▲ A car for which either the net weight is in excess of the car's load limit or the gross weight is in excess of the track weight limit at any point along the route of movement is defined as an overloaded car, this includes overloaded cars attributable to weather conditions.
- A NS may elect to stop an overloaded car enroute and hold it on a track where partial unloading may be accomplished. It will be the responsibility of the consignor or owner of the shipment to partially unload the car at its expense. Removal of lading must be sufficient to eliminate the overload condition as defined above. NS will not furnish any personnel, equipment or machinery that may be necessary to partially unload the overloaded car.

Charges for each such car will be assessed as follows:

1. \$469 per car switching charges.
 2. \$130 per car reweighing charge.
 3. Demurrage of \$105 per car per 24-hour day or fraction thereof, beginning from the time of notification by NS until NS has been advised that lading has been adjusted and the car is ready to move on to destination. No free time will be allowed and charges will apply for all days held, including holidays.
 4. Freight charges pursuant to Item 5010 or Item 5020.
 5. \$578 per car overload charge for each such car that has been determined by NS to have been overloaded by more than 5000 pounds, on all commodities except those listed in 6.
 6. \$1,156 per car overload charge if shipment contains Scrap Iron/Steel (STCC 40211), Pig Iron (STCC 33111), Mill Scale (STCC 33119) Metalizing Plant Products (STCC 33115), or Construction and Demolition Debris (STCC 4029154).
- B. NS may elect to stop a trainload shipment that includes one or more overloaded cars enroute and hold the entire train on a track or tracks where partial unloading may be accomplished. It will be the responsibility of the consignor or owner of the shipment to partially unload each overloaded car at its expense. Removal of lading must be sufficient to eliminate the overload condition as defined above. NS will not furnish any personnel, equipment or machinery that may be necessary to partially unload the overloaded car or cars.

(Continued on next page)

- ▲ - Change in wording which results in neither increase nor reduction in charges

ISSUED JUNE 24, 2010

EFFECTIVE JULY 14, 2010

ISSUED BY
D. D. Fisher, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E. Roanoke, VA 24042-0047

NS 8002-A

6TH REVISED PAGE 40

SECTION 5
RULES AND CHARGES GOVERNING OVERLOADED CARS

ITEM 5000 (Continued)

RULES GOVERNING OVERLOADED CARS
(Not applicable on cars loaded with Coal, Coke or Iron Ore)

Charges for each such car will be assessed as follows:

1. \$ 130 per car reweighing charge.
 2. Demurrage of \$5,775 per train for each 12-hour period or fraction thereof, beginning from the time of notification by NS until NS has been advised that lading has been adjusted and the train is ready to move on to destination. No free time will be allowed and charges will apply for all days held, including holidays.
 3. Freight charges pursuant to Item 5010 or Item 5020
 4. For each such car that has been determined by NS to have been overloaded by more than 5,000 pounds, \$578 per car overload charge
- C. In the event that overloaded car is delivered to destination without being stopped enroute for partial unloading (whether the overloaded condition is discovered prior to delivery or not), charges for each such car determined by NS to have been overloaded by more than 5,000 pounds will be assessed as follows:
1. \$578 per car overload charge on all commodities except those listed in 2
 2. \$1,156 per car overload charge if shipment contains Scrap Iron/Steel (STCC 40211), Pig Iron (STCC 33111), Mill Scale (STCC 33119) or Metalizing plant products (STCC 33115), or Construction and Demolition Debris (STCC 4029154).

Freight charges will be assessed pursuant to Item 5030

- ◆D Where an overloaded condition is due, in part, to weather (rain, snow, ice, etc), applicable railroad charges (including but not limited to demurrage, storage, switching, and reweighing) will be waived if:
1. The consignor or owner of the shipment provides a certified weight certificate showing the weight of the shipment was below the stenciled load limit of the car and such certificate is provided within 24 hours of notification of overload (excluding Saturdays, Sundays, and Holidays); and
 2. The consignor or owner of the shipment partially unloads the car or otherwise eliminates the overload condition at its expense within five days.

Absent the timely presentation of such a certified weight certificate all railroad charges shall apply. If the overload condition is not remedied by the consignor or owner of the shipment within the five days, all applicable railroad charges shall apply and will be assessed after the end of the fifth day; railroad charges that would have been assessed during the five days shall not apply and will not be assessed. NS will not furnish any personnel, equipment or machinery that may be necessary to partially unload or otherwise remedy the overloaded rail car

◆ - Reduction.

ISSUED AUGUST 4, 2010

EFFECTIVE AUGUST 4, 2010

ISSUED BY
D. D. Fisher, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E, Roanoke, VA 24042-0047

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NS 8002-A

1ST REVISED PAGE: 41

SECTION 5
RULES AND CHARGES GOVERNING OVERLOADED CARS

ITEM 5030

FREIGHT CHARGES APPLICABLE ON EXCESS LADING WHEN DELIVERED TO DESTINATION

When an overloaded car has been delivered through to destination without being stopped enroute for partial unloading, the freight in excess of the car's load limit or freight equivalent to the difference between the car's gross weight and the lowest track weight limit at any point along the route of movement, whichever is greater, will be billed at \$53 per ton

◆ ADD ITEM 5040

RULES GOVERNING IMPROPERLY LOADED CARS

It is the duty of the shipper to ensure that its shipment complies with the AAR loading Rules and the NS Loading Rules. NS cannot and does not routinely inspect shipments to determine compliance with these Loading Rules in light of the various different requirements peculiar to each respective shipment needed to secure compliance with the Loading Rules. Where NS does inspect a shipment, NS does so in general terms and NS takes no responsibility for hidden or latent non-compliance with the Loading Rules or patent non-compliance with the Loading Rules which because of the unique characteristics of the shipment are not readily recognizable except to a person expert to the particular shipment.

A. NS may elect to stop an improperly loaded car enroute and hold it on a track where the load realignment may be accomplished. It will be the responsibility of the consignor or owner of the shipment to align or secure the load in the car at his expense. NS will not furnish any personnel, equipment or machinery that may be necessary to realign and secure the shipment properly.

Charges for each such car(s) will be assessed as follows:

1. \$469 per car switching charges.
2. \$500 per car handling charge for improperly loaded cars
3. Demurrage of \$105 per car per 24-hour day or fraction thereof, beginning from the time of notification by NS until NS has been advised that lading has been adjusted and the car is ready to move on to destination. No free time will be allowed and charges will apply for all days held, including holidays.

B. NS may elect to stop a trainload shipment that includes one or more improperly loaded car(s) enroute and hold the entire train on a track or tracks where proper alignment or securance may be accomplished. It will be the responsibility of the consignor or owner of the shipment to secure or adjust each improperly loaded car at his expense. NS will not furnish any personnel, equipment or machinery that may be necessary to properly secure a load.

Charges for each such car will be assessed as follows

1. \$500 per car handling charge for each improperly loaded car
2. Demurrage of \$5,775 per train for each 12-hour period or fraction thereof, beginning from the time of notification by NS until NS has been advised that lading has been adjusted and the train is ready to move on to destination. No free time will be allowed and charges will apply for all days held, including holidays.

◆ - Increase.

ISSUED SEPTEMBER 9, 2005

EFFECTIVE OCTOBER 1, 2005

ISSUED BY

D. D. Fisher, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S E, Roanoke, VA 24042-0047



TARIFF UP 6004-C

Cancels UP 6004-B

(Revision 1)

Applying On

ACCESSORIAL SERVICES - RULES AND CHARGES

Governed, except as otherwise provided herein, by UFC 6000-series and
OPSI. 6000-series.


Issued By:

E. A. HUNTER - MANAGER PRICING SERVICES
B. A. ROMMEL - MANAGER PRICING SERVICES

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

Issued March 26, 2008
Effective April 1, 2008

UP 6004-C

	UP 6004-C	Item: 8000-H OVERLOADED CARS
CHANGE KEY: A-Add; C-Change, D-Decrease; I-Increase; and X-Expire		
For billing purposes use the following rate authority: UP 6004-C-8000-H		
STCC/GROUP	STCC	DESCRIPTION
ALL STCCS	01-99	All Commodities
GENERAL RULE ITEM 8000		
OVERLOADED CARS		
[I]		
1 Railcars must be loaded in conformity with railroad loading requirements and must not be loaded in excess of the carload lading weight capacity as defined in UMLER/EMIS. Load limits will be determined by the equipment gross rail load limit (GRL) as defined in the Official Railway Equipment Register		
A Railcars will be allowed to continue to their destination if they are overloaded by no more than 2,000 pounds, except those railcars with a GRL of 263,000 will be allowed a tolerance of 5,000 pounds to account for any scale variance. Should a railcar be loaded in excess of those tolerances, the overload penalty charge as specified in this item will apply. Cars overloaded by less than 2,000 pounds also will be assessed the charges herein if required by other railroads' restrictions.		
2 In the event Union Pacific determines that a railcar's lading weight causes it to exceed the gross rail load limit by more than the tolerances described in 1A above, the railcar(s) will be placed in "Overload" (OV) status, and the shipper of record on the waybill (the Shipper) will be assessed the Overload charge set forth herein		
A. Union Pacific will notify the Shipper via telephone, fax or by electronic means, informing the Shipper that the railcar is overloaded and that the Shipper will be required to unload the excess Lading weight at the operating convenience of Union Pacific.		
B The railcar in OV status will be switched to a location of rail carrier's convenience that will allow unloading of the excess Lading weight. Union Pacific will notify the Shipper of the location of the overloaded equipment, at which time the Shipper shall have 48 hours to remove excess weight		
The Shipper shall be responsible for performing and bearing all costs for removal of excess Lading weight. After the Shipper notifies Union Pacific that it has removed the excess Lading, Union Pacific will move the affected railcar to Destination in such manner and time as is practicable		
3. Execution of Section 7 of the Uniform Straight Bill of Lading will not relieve the Shipper from responsibility for payment of the Overload charge in this item. UP will bill the Shipper the Overload Charge set forth herein for cars found to be overloaded as described above. Payment is due within 15 days of invoice date		
Issued Effective	October 10, 2011 November 1, 2011	UP 6004-C
		Page 1 of 2 Item 8000-H Continued on next page

APPLICATION AND OVERLOAD CHARGES		
COLUMN	OVERLOAD APPLICATION RULES	
1	OVERLOAD charges are in U.S. dollars Per Car and apply under these conditions	
	Col.1 Amount	Route Code/Group
STCC Group: ALL STCC'S GROUP From: ALL UP POINTS GROUP To: ALL UP POINTS GROUP	1300.00	UP

APPENDIX A
ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

A. UPPOINTS GROUP

ARKANSAS
ARIZONA
CALIFORNIA
COLORADO
IDAHO
ILLINOIS
INDIANA
IOWA
KANSAS
LOUISIANA
MINNESOTA
MISSOURI
MONTANA
NEBRASKA
NEW MEXICO
NEVADA
OKLAHOMA
OREGON
PENNSYLVANIA
TEXAS
UTAH
WASHINGTON
WISCONSIN
WYOMING

Counsel's Exhibit L



**BNSF RAILWAY COMPANY
BNSF RULES BOOK 6100-A
(Cancels BNSF Rules Book 6100)**

**CONTAINING
RULES, REGULATIONS AND SPECIAL CHARGES
GOVERNING
THE TRANSPORTATION OF FREIGHT
ON
BNSF RAILWAY COMPANY
IN
THE UNITED STATES, MEXICO AND CANADA
AND
REGULATIONS GOVERNING CURRENCY EXCHANGE ON TRAFFIC
FROM, TO AND BETWEEN STATIONS IN CANADA
AND
CAR HIRE ON TRAFFIC TO OR FROM MEXICO**

For explanation of abbreviations / reference marks, see Item 110

ALSO APPLICABLE ON INTRASTATE TRAFFIC

ISSUED DECEMBER 29, 2000

EFFECTIVE JANUARY 1, 2001

Issued by J. C. Engstrom, P. O. Box 961069, Ft. Worth, TX 76161-0069

BNSF Rules Book 6100 – A

Item 3150D – Document Delay Charges on Grain Shuttle Trains Destined Stations in Mexico – (Concluded)

- C Notification and Release:**
1. No notification notice is required to be given by the railroad to any party.
 2. Cars will be considered to be “released” for entry into Mexico when all of the following requirements have been met.
 - a. All requirements to legally export the shipment from the United States to Mexico have been met, and the required documents are furnished to the BNSF.
 - b. All requirements to legally import the shipments into Mexico have been met and proof furnished to the BNSF.
-

Item 3180A - Charge - Failure to Complete Unloading of Bentonite Clay, Cancelled Effective October 31, 2001

Open-top or covered hopper cars of Bentonite Clay (STCC 14-511-10 and 32-952-32), which are released from unloading, but have not been completely unloaded, will incur a cleaning charge of \$350.00 per car. Such charge will be assessed against the consignee or party responsible for releasing the car before all of the lading has been removed. Refer to Rules 14 and 27 in Tariff UFC 6000-Series.

Item 3200A - Charge - Failure to Complete Unloading of Industrial Sand, Cancelled Effective October 31, 2001

Covered hopper cars of Industrial Sand (STCC 14-413), which are released from unloading, but have not been completely unloaded, will incur a cleaning charge for any material over 1,000 pounds at a rate of \$75.00 for each 2,000 pounds of material over the first 1,000 pounds. Such charge will be assessed against the consignee or party responsible for releasing the car before all of the lading has been removed. Refer to Rule 27 in Tariff UFC 6000-Series.

BNSF Rules Book 6100 – A

Item 3255 – Charge for Permanently Securing or Welding Apparatus to Heavy Duty Railcars – Issued February 14, 2007 – Effective March 7, 2007

Shippers and consignees are not allowed to make structural changes or weld anything to the heavy duty railcar, (see note 1) furnished by BNSF. If it is determined that a shipper or consignee has made structural changes or welded anything to the railcar, they will be charged a minimum of \$1,000 plus any additional cost associated with restoring the car to its former configuration or remedying the situation. Charges can be assessed by BNSF or its designated agent.

Note 1: Heavy duty railcar is identified by an AAR Mechanical Designation beginning with H-4 as listed in The Official Railway Equipment Register.

Item 3260C - Charge - Failure to Complete Unloading of Sugar - Issued May 22, 2007 – Effective June 12, 2007

When Covered Hopper Cars of sugar, which are released from unloading, but have not been completely unloaded, are returned to the original shipping point for reasons other than carrier's error, the return will be subject to one of the following conditions, whichever is lower, with a minimum charge of \$750: (1) to the rate, minimum weight, and route applicable for such return movement; or (2) the rate, minimum weight, and route from the original point in effect on the date shipment is tendered for return, to the actual weight of the return movement or (3) if original shipment was made with per car rates, the return portion will be determined by applying percentage of the returned weight to the original per car rate.

Cars will be considered as completely unloaded if the sugar remaining in the car does not exceed three (3) percent of the weight of the last loaded movement.

Cars originating at Billings, MT; Lovell, WY; Longmont, CO; Sterling, CO; Rocky Ford, CO; Ft. Morgan, CO; Bayard, NE; Mitchell, NE; or Scottsbluff, NE may be returned to Billings, MT; Scottsbluff, NE; or Sterling, CO in lieu of the original shipping point. The return will be subject to the rate, minimum weight, or if original shipment was made with per car rates, the return portion will be determined by applying percentage of the returned weight to the original per car rate and route as though Billings, MT, Scottsbluff, NE, or Sterling, CO was the original shipping point.

Cars originating in Sidney, MT; Drayton, ND; East Grand Forks, MN; Hillsboro, ND; Redco, ND; Crookston, MN; Wilds, MN; Bingham, MN or Moorehead, MN may be returned to Sidney, MT; Drayton, ND; East Grand Forks, MN; Hillsboro, ND; Redco, ND; Crookston, MN; Wilds, MN; Bingham, MN or Moorehead, MN in lieu of the original shipping point. The return will be subject to the rate, minimum weight or if original shipment was made with per car rates, the return portion will be determined by applying percentage of the returned weight to the original per car rate and route as though Sidney, MT; Drayton, ND; East Grand Forks, MN; Hillsboro, ND; Redco, ND; Crookston, MN; Wilds, MN; Bingham, MN or Moorehead, MN were the original shipping point.

BNSF Rules Book 6100 – A

***Item 3261B – Application of Barrier Seals Upon Completion of Unloading of Bulk Sugar Hopper Cars –
Issued: October 1, 2009– Effective October 2, 2009 (Decrease)***

Item 3261 applies to all BNSF owned or leased covered hopper equipment in sugar service.

Customers who have completed unloading of bulk sugar hoppers are responsible for ensuring that the doors on each unloaded car are properly closed and latched. In addition, Customer is responsible for applying barrier seals to all openings and locations on the railcars that access the interior of the railcar including but is not limited to all gates, slides, plenums, caps, hatch covers and shields. Barrier seals must be composed of high-tensile strength steel cable, totaling one-sixteenth (1/16) inch in diameter, and evidence of application and documentation of application must be performed as outlined in Item 2250-Series, paragraph 2 of BNSF Rules Book 6100-Series.

Customer is responsible for ensuring that hopper cars used in sugar service are completely unloaded per item 3260-Series, BNSF Rules Book 6100-Series prior to applying barrier seals to car.

For each empty sugar hopper car arriving at a shipper location for loading that is not properly closed, latched and/or sealed and is subsequently rejected dirty/contaminated by shipper, BNSF will assess a charge of \$500.00 and such charge shall be paid by the previous receiving customer(unloader).

For each empty sugar hopper car arriving at a shipper location that is not properly closed, latched and/or sealed, and shipper accepts and loads railcar, BNSF will assess a charge of \$500.00 and such charge shall be paid by the previous receiving customer(unloader).

Each empty sugar hopper car arriving at shipper location properly closed/latched and sealed by previous receiving customer(unloader), shall be deemed a clean and loadable railcar on arrival at shipper location. If railcar is subsequently rejected dirty/contaminated by shipper, BNSF will assess the shipper rejecting such car a charge of \$500.00 plus any actual cost incurred by BNSF to make the car acceptable for loading by the shipper.

***Item 3265A – Charge – Failure to Complete Unloading of Sugar Beet Pulp Pellets
Cancelled Effective October 31, 2001***

Covered Hopper Cars of Sugar Beet Pulp Pellets (STCC 20-619), which are released from unloading, but have not been completely unloaded, will incur a cleaning charge of \$350.00 per car. Such charge will be assessed against the Unloader of the car responsible for releasing the car before all of the lading has been removed. Refer to Rule 27 in Tariff UFC 6000-Series.



CSXT 8100

ORIGINAL PAGE XII-C-1

SECTION XII-C
MISCELLANEOUS PROVISIONS

SECTION XII-C
CANCELS SECTION XII-B in its entirety
MISCELLANEOUS PROVISIONS

Not Applicable on Coal (STCC 11) or Coke, the Direct Product of Coal (STCC 29 914)

For Applicable Provisions on these Commodities, see Tariff CSXT 8200

ISSUED MARCH 2, 2007

EFFECTIVE MARCH 3, 2007

CSX TRANSPORTATION
Marketing Services
6737 Southport Drive South
Jacksonville, FL 32216



CSXT 8100

ORIGINAL PAGE XII-C-4

SECTION XII-C
MISCELLANEOUS PROVISIONS

SHIPPING INSTRUCTIONS – ITEM 12001

All shipping instructions must be submitted by the Consignor or person acting on Consignor's behalf using CSX's internet web site, ShipCSX.com, or via previously agreed-upon means of Electronic Data Interchange. Consignors may make arrangements directly with third party logistics services providers to submit shipping instructions on their behalf via ShipCSX.com or via EDI.

CSX will accept shipping instructions via telefacsimile 1-800-448-2984 at its Customer Service Center, subject to a \$35.00 charge per faxed bill of lading. CSXT reserves the right to reject as an unreasonable request for service, any "Fax" shipping instructions that are illegible, whether due to poor transmission quality, poor or illegible handwriting or otherwise. CSXT will not accept delivery of shipping instructions by US Mail, express service, personal delivery or otherwise.

Charges for "Fax" shipping instructions do not apply to hazardous waste, United States Government shipments or voids and corrections.

All shipments received and accepted are transported subject to all applicable circulars, tariffs, contracts, price quotations, and the terms of the Uniform Straight Bill of Lading.

CAR CLEANING REQUIREMENTS FOR CARRIER SUPPLIED RAILCARS – ITEM 12002

(This item does not apply to shipper owned or shipper leased equipment.)

Pursuant to Rule 27 of the Uniform Freight Classification-6000 Series, car(s) must be unloaded completely prior to release as empty.

When Carrier supplied rail equipment is furnished to a consignor for loading and placed at consignee for unloading, the empty car(s) must be returned to CSXT in a condition reasonably suitable for immediate reloading of the same or a comparable commodity. The consignee is responsible for removing all materials from the rail car(s), including lading, dunnage, loading or unloading enhancement materials, and any other miscellaneous debris. CSXT reserves the right to assess charges to the consignee for all associated removal costs including the switching and forwarding of car(s) to the nearest non-railroad owned clean-out facility, at a minimum charge of \$500.00 per car.

Note: CSXT Does Not Provide Car Cleaning Services.

CAR(S) REJECTED BY CONSIGNOR – A consignor to whom an empty car is placed for loading may reject such car if its personnel in good faith believe the condition of the car is unsatisfactory for transportation of consignor's freight.

RETURNING OF RAIL SECUREMENT DEVICES

Enclosed Cars: The consignee is required to return and secure to the same car(s) all railroad-owned securement devices removed to complete unloading, security lock or bulkhead doors, close all top hatches and bottom outlets and exterior doors.

Open Cars: The consignee is required to return and secure to the same car(s) all railroad-owned securement devices removed to complete unloading, store chains, ratchets, tension devices, and other appurtenances and close all bottom outlets.

COVERED HOPPER CAR REQUIREMENTS FOR LOADING CEMENT – ITEM 12002.5

Effective March 1, 2003, all cement shippers will be responsible for loading covered hopper cars in a manner that avoids accumulation of cement over ½" thick anywhere on the exterior of the car body.

- A **Railroad Owned or Controlled Covered Hopper Cars:** Cars supplied by CSX for loading with accumulated cement over ½" thick, should be rejected with CSXT notified that the accumulated cement should be removed.
- B **Privately Owned Covered Hopper Cars:** Before a shipper orders CSXT to move a car, any accumulated cement over ½" thick must be removed.

ISSUED MARCH 2, 2007

EFFECTIVE MARCH 3, 2007

CSX TRANSPORTATION
Marketing Services
6737 Southpoint Drive South
Jacksonville, FL 32216

1ST REVISED TITLE PAGE

NORFOLK SOUTHERN RAILWAY COMPANY

VISION: BE THE SAFEST, MOST CUSTOMER-FOCUSED AND SUCCESSFUL TRANSPORTATION COMPANY IN
THE WORLD

FREIGHT TARIFF

NS 8002 - A

(For Cancellation, See Page 12)

LOCAL AND JOINT FREIGHT TARIFF

PUBLISHING

RULES AND CHARGES ON

ACCESSORIAL SERVICES

AT STATIONS ON

NORFOLK SOUTHERN RAILWAY COMPANY

ISSUED DECEMBER 1, 2010

EFFECTIVE MARCH 1, 2011

ISSUED BY
D. D. Fisher, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY
110 Franklin Road, S. E.
Roanoke, VA 24042-0047

NS 8002-A

4TH REVISED PAGE 70

SECTION 6
RULES AND CHARGES FOR MISCELLANEOUS SERVICES

ITEM 6480

HOLDING OF CARS CONTAINING POTASH AT ENOLA, PA AND HARRINGTON, DE

- 1 When delivery of trainload, or portion of trainload, shipments of Potash, in shipper owned or leased equipment, consigned to stations, and delivery cannot be made to stations account of inability of consignees to receive it or because of any other condition attributable to consignee, such trainload, or portion of trainload will be held at shipper's leased track at Enola, PA and/or Harrington, DE until orders are received to effect delivery. Delivery of trainload, or portion of trainload to consignees can be accomplished in any size multiple of cars or any number of deliveries, as required, but the specific cars to be delivered with each order will be at railroad discretion. The charges for this service will be \$249.00 per single car, \$105.00 per car for multiples of five (5) to fourteen (14) cars, and \$58.00 per car for multiples of fifteen (15) or more cars. The line haul rate to apply on shipments held at Enola, PA, or Harrington, DE, under the provisions of this item, is the applicable rate (local rate, joint rate or combination of intermediate rates) in effect on date of shipment from point of origin over the route of movement via Enola, PA, and/or Harrington, DE, to final destination. No charge, other than that provided herein, on cars held at Enola, PA and/or Harrington, DE, will be made for reshipment to final destinations.

ITEM 6490

HOLDING OF CARS CONTAINING POTASH AT LANCASTER, PA

- 1 When delivery of carload shipments of Potash, in shipper owned covered hopper cars, consigned to Rohrerstown, PA, cannot be made at this station account of inability of the consignee to receive it or because of any other condition attributable to consignee, such cars will be held at consignee's leased track at Lancaster, PA, until orders are received to effect delivery at Rohrerstown, PA. The charge for this service is \$187.00 per car. The line haul rate to apply on shipments held at Lancaster, PA under the provisions of this item, is the applicable rate (local rate, joint rate or combination of intermediate rates) in effect on date of shipment from point of origin over the route of movement via Lancaster, PA to final destination. No charge, other than that provided herein on cars held at Lancaster, PA will be made for reshipment to Rohrerstown, PA. Reshipment of cars held at Lancaster, PA can be accomplished in any number of deliveries, as required, but the specific car(s) to be delivered with each order will be at railroad discretion.

ITEM 6500

▲ UNLOADING AND RELEASE OF CARRIERS SUPPLIED EQUIPMENT AT DESTINATION

Pursuant to Rule 27 of the Uniform Freight Classification 6000 series, car(s) must be unloaded completely prior to release as empty.

Upon arrival and placement of carrier supplied equipment for unloading at destination, consignee (unloader) will be responsible for unloading the equipment in a manner which does not damage the equipment, closing doors if so equipped, and for releasing the equipment in a condition suitable for reloading a similar commodity by another shipper. If unloader refuses or fails to remove all lading, dunnage, blocking, bracing, strapping, miscellaneous debris, or other material that was part of the inbound shipment, secure interior loading devices, or places additional material into the equipment before releasing the car, and Norfolk Southern discovers such failure and proceeds to remove or have removed such debris, Norfolk Southern will bill the unloader a charge of \$1000.00 per car. In addition NS reserves the right to assess additional charges associated with the cost of removing the material from the equipment, and any applicable demurrage or necessary switching charges.

▲ - Change in wording which results in neither increase nor reduction in charges

ISSUED NOVEMBER 1, 2011

EFFECTIVE JANUARY 1, 2012

ISSUED BY
D. D. Fisher, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S E, Roanoke, VA 24042-0047



UP TARIFF 6007-B

(Revision 2)

Applying On

GOVERNING RULES FOR REGULATED TRAFFIC

Governed, except as otherwise provided herein, by the provisions of
the Governing Rules Documents Identified in Item 5.

Issued By:


E. A. HUNTER - MANAGER PRICING SERVICES

B. A. ROMMEL - MANAGER PRICING SERVICES

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

Issued: January 17, 2011
Effective February 7, 2011

UP 6007-B

 UP 6007-B	Item: 278-D CAR CLEANING CHARGE
<p>CAR CLEANING CHARGE</p> <p>Prior to releasing to UP any empty UP owned, leased or controlled equipment, consignee must remove all:</p> <ul style="list-style-type: none">• lading (unless otherwise provided by applicable rate tariff),• non-railroad owned dunnage,• blocking,• bracing,• strapping,• spillage,• debris, and• any other non-railroad owned material that was part of the inbound shipment. <p>This includes but is not limited to nails, boards, wood, cardboard, seals not removed and banding attached to car floor and/or sidewalls. Failure to meet the above requirements will result in an assessment of a "Dirty Car" charge of [i] \$705.00. This charge will be assessed to the party (shipper or receiver) last having control of the equipment</p> <p>For additional information regarding loading and unloading of railcars please refer to the Uniform Freight Classification 6000-series, Rule 27, which can be found at: http://www.narps.net/UFC%206000/6000-M.pdf.</p>	
Issued Effective	December 2, 2008 January 1, 2009 UP 6007-B Page 1 of 1 Item 278-D Concluded on this page

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42119

NORTH AMERICAN FREIGHT CAR ASSOCIATION
v.
UNION PACIFIC RAILROAD CO.

VERIFIED STATEMENT OF WAYNE L. RONCI

My name is Wayne Ronci. I am Director, Damage Prevention Field Services for Union Pacific Railroad ("UP"). I am responsible for overseeing a team of Field Managers assigned throughout the UP system that is specifically tasked to ensure that customer shipments are transported to their destinations safely and damage-free. As part of this mission, Damage Prevention Services works with its customers and other UP personnel to prevent cargo-related accidents and other hazards posed by the presence of product residue on railcar wheels and safety appliances.

I earned my Bachelor's degree in Civil Engineering – Transportation from Purdue University in 1980 and then began my career with UP's predecessor Missouri Pacific Railroad ("MP"). During my career at MP and UP, I have held a variety of positions in the Operations and Engineering departments, including Assistant Roadmaster responsible for track maintenance, Assistant Trainmaster responsible for switching operations and train make up activities, and Assistant Engineer II responsible for design and layout of yard track improvements. I joined Damage Prevention in 1992. Prior to my current position, I was Damage Prevention Engineer – Intermodal and previously Damage Prevention Manager for Automobile and Industrial Products customer groups. In Damage Prevention Services, I have been responsible for developing safe

load plans and other initiatives to minimize the risk of damage to cargo. I was appointed to my current position in 2004.

My experience in Damage Prevention Services has demonstrated to me that effective safety and damage prevention measures often require cooperation between railroad and customer personnel. By taking a proactive and cooperative approach with customers and with UP's Marketing, Mechanical, and yard personnel, our Damage Prevention Services team seeks to prevent accidents and incidents that cause damage to shipments and rail equipment, or injury to UP and other personnel. In the last five years, my team and I became aware that there was an increasing number of preventable incidents caused by the presence of lading residue on railcar wheels. We responded by redoubling our efforts to identify and fix the source of these problems at customer loading and unloading facilities. After several years, and with the benefit of Item 200-B and its predecessor, it is clear that these efforts have prevented accidents.

I am submitting this statement to (1) describe the safety risks and operational disruptions created by lading residue on railcar wheels and safety appliances, (2) discuss UP's various efforts to prevent accidents, injuries, and disruptions caused by lading residue, and (3) explain how Item 200-B of Tariff 6004-C has helped UP prevent such accidents, injuries, and operational disruptions.

I. HAZARDS AND COSTS CREATED BY LEAKING CARS AND PRODUCT RESIDUE ON RAILCAR WHEELS OR SAFETY APPLIANCES

Product residue poses safety hazards in two different ways. First, when on railcar wheels, it can interfere with the safe operation of retarders at UP's hump classification yards and cause dangerously fast-moving cars. Second, product residue on the safety appliances of a railcar can prevent UP and other personnel from using them in a safe way while climbing or

riding the car. In either case, lading residue interferes with UP's ability to provide safe, reliable, and efficient service to its customers.

A. "Hump" Classification Yards and Product Residue on Car Wheels

1. Hump Yard Operations

At classification yards, cars are separated from inbound trains and then sorted and assembled into new trains (or "trimmed") based on their next destination. UP accomplishes the sorting process most efficiently at its "hump" classification yards by using engines to push the cars over a man-made hill – the "hump." The car rolls down the hill, and switches direct it to one of several sorting tracks in the classification "bowl." Each car must remain under control, yet travel fast enough to reach its destination on the sorting track, where it usually couples with the car that preceded it. To achieve this safe coupling speed (which is usually about 4-6 miles per hour), the car is slowed down along the way by one or more retarders. At five of UP's major classification yards, the retarders accomplish speed reduction by applying varying amounts of pressure to the wheels of the car; the friction that is created slows the car.¹ I have attached as Exhibit 1 photographs depicting such a retarder at UP's Bailey Yard in North Platte, Nebraska. The amount of pressure applied by the retarder is determined by a computer, based on the length the car needs to travel, characteristics of the car, weather conditions, track geometry, and other factors.

Lading residue on a railcar wheel can prevent a friction-based retarder from slowing the car to the expected and appropriate speed. Lading residue on a wheel can also transfer to the retarder itself, so that the next car or cars are also not slowed sufficiently. In

¹ At UP's Bailey Yard in North Platte, Nebraska, there are actually two separate humps operated using friction-based retarders.

either case, the lading residue essentially prevents the retarder from making sufficient contact with the railcar wheel, and the retarder cannot apply enough friction to the wheels. As an example, a car might enter the retarder at 10 miles per hour and the computer requests that it exit at 5-6 miles per hour. But if the retarder is not able to generate enough friction, the car might exit the retarder at a speed above the requested speed, or even above the entering speed. Fortunately, many times these “overspeeds” do not cause an incident: especially with relatively “minor” overspeeds. subsequent retarders are able to slow the cars. or the coupling occurs without damage.

2. Damage and Injury

Unfortunately, a number of overspeeds caused by lading residue *have* caused accidents, derailments, and/or collisions. Photographs showing damage and the potential for employee casualties from some of these incidents are attached as Exhibit 2 to my statement.²

First and foremost, these photographs show the threat that unexpectedly fast moving cars pose to the safety of UP yard personnel. These cars commonly weigh up to 263,000 or 286,000 pounds. The damage from one very fortunate “close call” is depicted in Photographs 3 and 4 in Exhibit 2. In this instance, two railcars carrying tallow being shipped by { } exited the retarders at UP’s Bailey Yard in North Platte, Nebraska. at a speed exceeding 20 miles per hour. The cars were the first ones being sent to a particular sorting track, and they moved so quickly that they sped past the switches at the far end of the sorting track. They reached the trim track beyond the sorting track, where UP’s crews are generally actively at work conducting trimming operations to prepare

² I understand that each of these photographs come from files that were provided by UP to NAFCA during the course of this proceeding.

outbound trains. Fortunately, in this instance, when the speeding railcars caused another car to derail and collide with a locomotive, UP personnel were not in or around the impacted locomotive or car. If they had been, they might have been seriously injured.

The photographs in Exhibit 2 also show that overspeed cars have been damaged, have caused damage to other cars and locomotives, and have caused loss of lading. In some instances, cars have been so damaged that they need to be scrapped, and cars have been damaged in such a way that lading is damaged or completely lost. For example, on February 10, 2009, potato flakes on the wheels of four cars shipped from { } caused an overspeed car that collided with the car of another UP customer at UP's Bailey Yard in North Platte, Nebraska. Resulting damage to the impacted car is shown in Photograph 5. The car that was impacted by the overspeed car was sufficiently damaged that it was scrapped. While the impact only caused a small amount of product from this other car to be released, the entire load needed to be disposed of because of exposure to the elements and potential contamination.

Similarly, soybean oil on the wheels of a loaded car caused a May 5, 2009, overspeed at UP's Proviso, Illinois, classification yard. Photographs 6 and 7 in Exhibit 2 show the damage to the car of another UP customer that was impacted by the overspeed. The right side of the end sill was torn as the result of the impact. The customer of the impacted car lost an entire carload of product.

Damage caused by a January 26, 2009, overspeed in UP's Bailey Yard is shown in Photographs 8-10 in Exhibit 2. This impact was the result of a car loaded with sulfate of potash having residue on its wheels. There was damage to several vehicles being carried in the auto rack car that was impacted.

Overspeeds also have damaged fixed track and signal equipment. The incident described above and depicted in Photographs 3 and 4 in Exhibit 2 caused track damage, although it is not apparent in the photograph.

Damage could be even more substantial if a car carrying hazardous materials were involved or impacted. In some cases, cars containing hazardous materials have been impacted by overspeed cars, but to my knowledge in recent years, fortunately none has resulted in the release of hazardous materials.

Each of the damage-causing incidents depicted in Exhibit 2 was logged by UP's Safety Department; if the damage is above a threshold set by law, UP also provides public reports to the FRA. In addition to 17 FRA-reported incidents since 2008, UP has experienced a far greater number of non-reportable overspeed incidents attributable to product residue on railcar wheels. These incidents involved minimal or no damage and therefore were not reported to the FRA.³ But even when there was no actual damage, there was still risk to the safety of UP personnel and the potential for damage.

3. Operational Disruption

Whether or not overspeeds lead to an accident, damage, or injury, they disrupt the operation of the hump yard. These disruptions are not just a matter of inconvenience to UP; they interfere with service to customers, who depend on and expect UP to provide reliable and timely service.

³ UP's Safety Department keeps a log of incidents causing any amount of damage or derailment. I understand that relevant entries from the Safety Department database and the entire database that Damage Prevention Services uses to track these incidents were provided by UP to NAFCA during the course of this proceeding.

If a railcar overspeeds, an alarm alerts the Signal Department crew, and the hump may be shut down to determine the cause of the incident. The retarder may require inspection and cleaning if residue is found, a process that can take 1-2 hours. If there is an accident or derailment, the disruption to yard operations is obviously even greater. Crews need to respond to the accident and operations might be shut down to allow the accident to be stabilized, the damage cleared, and any repairs to track made. This could easily take several hours.

If a retarder, the hump, or part of the yard is shut down, cars waiting to be classified may not make their scheduled trains, or scheduled trains may be delayed, delaying service to many different UP customers. For example, a hump crew can normally process 2-3 cars per minute. At the Bailey Yard at North Platte, Nebraska, UP handles approximately 2,400 cars per day. Shutting down a retarder or hump for even only 20-30 minutes can cause a significant delay that affects the ability of trains to depart Bailey Yard on-time.

4. Products Causing Overspeeds

UP has observed overspeeds caused by a wide variety of commodities. The database that Damage Prevention maintains identified over 25 commodities, at least 20 of which have been connected to overspeeds.⁴ (Others were lading residue on car safety appliances.) Some of these commodities, like oils, tallows (which are animal fats), and greases, quite predictably have slippery characteristics that can interfere with a retarder's attempt to slow down a car. Other commodities that have caused problems are perhaps less intuitive. For example, dry products like potato flakes (the base for instant mashed potatoes and other reconstituted potato products) can become caked onto a car's wheels with mud or moisture. Industrial salt, shipped

⁴ I understand that the Damage Prevention Services database was produced by UP to NAFCA as part of this case.

by several UP customers, similarly is affixed to car wheels by mud. When a car with salt on its wheels goes through a retarder, the heat of the retarder reacts with the salt and can prevent a friction-based retarder from slowing the car. Damage Prevention Services has not limited our efforts to just a particular list of products because we are interested in preventing lading residue related accidents, no matter what product is the cause.

B. Lading Residue and the Use of Safety Appliances

Lading residue also poses a safety hazard by interfering with the safe use of railcar safety appliances. Safety appliance is the more general term used to refer to ladders, handholds, brake handles, running boards, catwalks, etc. – the devices on a railcar that a worker might depend upon when working on or inspecting a car. Residue on any of these safety appliances could cause a worker to lose his or her grip, slip, or fall. Especially when a railcar is moving, a slip or fall can have deadly consequences. I have attached as Exhibit 3 to my statement photographs showing examples of cars that UP has set out for unsafe lading residue on safety appliances.

UP personnel make use of safety appliances at various times while a car is in transit from its origin to its destination. They most often are used by UP personnel during switching operations. In addition to the hump classification yards described above, UP operates a number of “flat” classification yards; during switching at these yards, railroad personnel may climb and hold onto cars and operate handbrakes. UP personnel use car safety appliances for other purposes as well; it is sometimes necessary to climb onto a car using the ladder, for example to inspect for a suspected safety concern or to stop a car from leaking.

UP’s customers and their employees or contractors also make use of safety appliances. Loading and unloading personnel use ladders to inspect the car or to climb to the

manway dome. Most of our customers therefore are also interested in keeping them in good working order and free of impediments.

Finally, in an emergency situation, it is possible that first responders also would need to use safety appliances. While UP hopes such emergency situations are rare if they happen at all, we spend considerable resources to prepare for their possibility.

UP has set out cars where food and petroleum products introduced a slipping or gripping hazard. While to my knowledge no injuries to UP personnel have been traced back to lading residue on a safety appliance, we would like to keep it that way. As the photographs depict, these are not mere drips on the cars; rather, UP is concerned with amounts that introduce a real safety concern. When these conditions are obvious, they may render a safety appliance unusable; unless absolutely necessary to avoid some other danger, a careful employee would not climb the ladders shown in several of the photographs in Exhibit 3. But lading residue can be more dangerous when it is not immediately obvious – for example, a dark product that dries onto a ladder and is only visible to an employee after he slips or is unable to grab onto the ladder. Photographs 14 and 15 in Exhibit 3 show such a ladder that is covered with Liquid NOS.⁵

C. Leaking Cars

Cars that leak obviously result in the loss of product. but they also pose safety hazards to UP personnel and the public at large, can cause damage to railroad equipment, and can disrupt UP operations. Releases can spread product to safety appliances and wheels, causing each of the safety risks and disruptions that I describe above. In addition, leaking and discharging cars introduce foreign substances onto track, roadway. and railroad equipment.

⁵ As I explain later, sometimes lading residue on car safety appliances is the result of a loading or unloading practice, and sometimes it is the result of leakage during transit, usually traced back to the failure to adequately secure the car.

These releases must be cleaned up and, even if the lading is not a hazardous material, it can still pose hazards to the public and nearby waterways. Finally, leaks and discharges significantly interrupt normal operations on UP's tracks and in UP's yards. The amount of disruption can vary, depending on the substance involved, the amount that is released, the location of the release, and how far the release extends. The releases shown in the photographs in Exhibit 4 caused significant disruption to UP's operations. The soybean oil release in UP's Wichita Yard on September 5, 2009, and shown in Photographs 16-22 in Exhibit 4, caused the yard to be shut down for about five hours. Other releases have required ten hours of clean-up or longer.

II. UP'S EFFORTS TO IDENTIFY THE SOURCES OF AND PREVENT ACCIDENTS CAUSED BY LADING RESIDUE

Because of the safety hazards posed by lading residue on railcar wheels and safety appliances, UP has taken a number of steps to address lading residue at its source. Our proactive approach is based on the view that the best way to prevent accidents from occurring is to build safety into every step of the process. For Damage Prevention Services, that means working with UP's customers to make sure that loading and unloading practices, and the loading and unloading facilities themselves, do not introduce hazards to railcars that are released to UP for transportation.

Fortunately, the vast majority of customers and customer facilities do not release cars that are improperly sealed or cars that are unsafe due to the presence of lading residue on wheels or safety appliances. Most customers recognize that their loading and unloading practices and the condition of their facilities impact the safety and reliability of UP's transportation operations and their own employees' safety. Some customers, however, have regular or occasional incidents related to the unsafe presence of lading residue on car wheels or safety appliances. Damage Prevention Services works with these customers to identify and

address the cause of these incidents, and in most cases they are responsive to UP's concerns and suggestions.

A. Origin of UP's Efforts to Prevent Accidents Caused by Lading Residue

Damage Prevention Services' mission is to promote safe loading and unloading practices that allow UP to transport freight safely and damage-free. About 5 years ago, UP's yard crews reported an increase in the number of overspeeds due to residue on railcar wheels. Damage Prevention Services investigated the cause of these incidents. In the vast majority of cases, the residue that caused an overspeed incident was the same as the product that was being shipped in the overspeed car. In some cases, if there was more than one car that exited the retarder at an excessive speed, the residue that caused the overspeed was the same as the product being shipped in the first car. This occurs because a car with residue on its wheel can transfer product to the retarder itself, and the retarder will be unable to slow the next car or two even if those cars did not have residue on their wheels. We confirmed our conclusions using laboratory testing.⁶

Identifying the residue that causes an overspeed is not enough information to prevent an accident. However, we observed that overspeeds and railcars with residue on their wheels did not come from every customer facility that UP serves. With a known safety hazard and a way to narrow down on the source of the hazard, it made sense for Damage Prevention Services to focus more attention on the issue.⁷ We initially decided to reach out to customers

⁶ Following an overspeed connected to lading residue, UP personnel (or UP's contractors) were (and still are) instructed to swipe the wheel for a sample. At UP Labs (or now at an outside contractor), a spectrometer is used to identify the sample. This type of analysis helps us confirm the identity of the wheel residue that causes an overspeed.

⁷ In the past, Mechanical and yard personnel occasionally reached out directly to customers. By elevating the issue to Damage Prevention Services, UP is taking a more systematic and proactive approach to address the concerns posed by lading residue.

with known problems. By visiting customers' loading and unloading facilities, we determined the actual source of lading residue that caused overspeeds: loading and unloading practices and facility conditions that allow lading residue to become affixed to car wheels and safety appliances before the car is released to UP, or that allow lading to leak from the car.

B. Practices and Conditions that Introduce Lading Residue to Car Wheels and Safety Appliances

Damage Prevention Services has identified a number of different ways that lading residue makes its way to the exterior of a railcar and causes an unsafe condition on the car's wheels or safety appliances. All of these are traced back to specific unsafe practices or conditions at the loading and unloading facilities of UP's customers.

1. Loading Practices that Introduce Product Residue Before the Car is Released to UP

Some customer loading practices cause product to be spilled directly onto the exterior of a railcar. In these cases, product may accumulate on the wheels or safety appliances. In addition, spilled product elsewhere may spread to the wheels or safety appliances. For example, product can drip down the side of the car and onto the wheels before it cools or dries. Careless loading practices can also contribute to the collection of lading residue on the ground and/or tracks of a facility; when cars move across the tracks, the wheels can accumulate product. In either case, UP is not concerned about occasional drips on the top of a car, which might occur in even a safe and careful loading process. Rather, we have always been clear to customers that we are concerned with product residue that affects the safety of the car while in transit.

Significant spillage generally is not built into a loading or unloading practice, I presume since the customer would prefer to ship and sell their product rather than spill it. But UP has observed railcars where it is apparent that the loader had a large or regular spill directly onto the exterior of the car and failed to stop it from happening or to clean it up. In addition,

Damage Prevention Services field personnel have observed these spills at customer facilities as they occur.

2. Leaking or Discharge Resulting from Shipper Failures to Secure a Car

If a shipper fails to secure or seal a tank car, lading may leak or discharge during transit. Various employees other than myself have been involved with tank cars with a missing manway gasket, an improperly installed gasket, a gasket that is not suited to the car, or a faulty manway lid. Customers have also released cars without properly securing valves. Overloaded cars can lead to "sloshing" during transit, which can also cause a spill or discharge. In any of these cases, the shipper's failure may not be apparent when UP train crews inspect the car. Photographs of cars that have leaked due to a customer's failure to secure or seal the car are attached as Exhibit 4 to my statement.

3. Unloading Practices

In general, unloading practices can cause accumulation of lading residue on a car's exterior in just the same way that loading practices do. However, spillage directly onto a car occurs less often during unloading than loading. This is because the cars are generally loaded from the top and then unloaded from the bottom. Still, one specific improper unloading practice can lead to leaks directly from the top of the car: tallow receivers heat cars to assist in unloading, and if they heat it too quickly the lading can essentially boil over the top of the car, spilling onto the exterior. Photographs of a car that has spilled for this reason are attached as Exhibit 5 to my statement.

In general, UP wants to solve the underlying problem. We therefore seek to trace the problem to its underlying cause, whether that is the shipper or the receiver.⁸

4. Conditions of Loading and Unloading Facilities

A common source of lading residue on a car's exterior and leading to overspeeds is the presence of residue on the ground and/or tracks of a loading or unloading facility.

Facilities with uneven surfaces, clogged drains, and infrequent cleaning can have large pools or collections of product on the track over which cars move. If product or some other substance accumulates in puddles or piles on or around the tracks, cars can pick up the residue when they move across the tracks.⁹ These conditions are shown in photographs from some of our site visits, attached to my statement as Exhibit 6:

- From a visit to a { } grain-loading facility in { }. Arkansas on February 1, 2008, photographs show feed and water standing over the rails. While the facility personnel had made efforts to clean cars in the area, the run-off collected with rain and product residue at several points along the track, and even caused a car to get stuck. Several of the customer's cars resulted in overspeeds at UP's North Little Rock hump yard, where the cars exited the retarder at 16.5 mph instead of around 7-8 mph.
- During a February 10, 2009, visit to the loading facility of { }, Idaho, the photographs show how the loading and track area was covered with potato flakes. It almost appears like snow, but the close-up photograph shows how this substance affixes itself to the car wheels.
- Damage Prevention Services field personnel have made numerous visits to facilities that load industrial salt. Photographs from December 2007 and February 2008 visits to one such facility of { }, Utah, reveal that the salt product collects around and over the top of tracks. Because trucks drive across

⁸ Damage Prevention Services personnel may choose to start by contacting the shipper since that is the party we have the most contacts with. In our experience, sometimes the shipper prefers to and is better positioned to reach out to its consignee, especially since the vast majority of wheel and safety appliance residue problems have been on shipper-owned cars.

⁹ Residue on car wheels generally is the product being loaded into the car. Some facilities, however, process multiple products in nearby areas or use other substances that can contaminate car wheels.

the entire length of the tracks, salt and mud gets mixed together and accumulates on railcar wheels when the railcars are moved across the tracks.

- The photographs also show “before and after” photographs of a { } facility in { }, Nebraska, that made necessary improvements. As I explain in further detail later, most of our customers recognize that the conditions we point out are problems that need to be corrected. Here, this facility that loads tallow was upgraded with properly graded concrete slabs and carefully located drainage to ensure that the product no longer lies on the ground where a car might move and pick it up.

Even at facilities that are well designed, UP has observed facilities that simply are not cleaned with any regularity. In some cases, the manager had never instructed employees to keep the track area clean. In other cases, UP has observed an even simpler cause: power washers were poorly maintained and therefore unavailable for use. For example, UP was informed by the plant manager that power washing equipment was left outside to freeze or was not repaired after it was broken.

C. UP’s Efforts to Work with Customers to Prevent Accidents Caused by Lading Residue on Car Wheels and Safety Appliances

Damage Prevention Services is interested in preventing accidents from occurring. It is unsafe to rely solely on inspections and setting out railcars that UP identifies as having product residue hazards. Rather, our greatest success at reducing hazards comes when we introduce safety measures at every step of the transportation process. For lading residue, as I explained above, that process starts with customers’ loading and unloading facilities. UP attempts to stop cars that pose safety hazards and reaches out to customers to address the source of these hazards. Damage Prevention Services personnel show customers the conditions that pose safety hazards, help identify the causes of those conditions, and make suggestions to resolve deficiencies. We remain willing to work with customers to improve the underlying conditions or practices that introduce lading residue to railcar wheels and safety appliances.

1. Stopping Cars with Unsafe Conditions

UP personnel who observe a car with an unsafe condition are instructed to stop the car. Damage Prevention Services has specifically informed them of the unsafe conditions associated with lading residue on railcar wheels or safety appliances. Contrary to NAFCA's concerns, UP does not stop and set out a car merely if it is a little dirty. Stopping a car, and thus interrupting operations, is disruptive and demands the attention of UP personnel that ordinarily are busy attending to other tasks. It simply would make no sense to stop and set out a car unless the car has a safety hazard. Damage Prevention Services therefore has no interest in establishing a "white glove" cleanliness standard. We have made sure that yard and train crews understand that.

Consistent with these instructions, UP has stopped and set out cars for unsafe product residue conditions at each point along a car's route – at origin, upon arriving at a classification yard, or after an incident traced to lading residue. While UP does not collect records that show cars that train crews have rejected at origin, this does occur. Moreover, train crews have been specifically alerted to watch for the presence of lading residue on wheels or safety appliances at specific customer facilities.¹⁰

Most commonly, UP stops and sets out cars at classification yards. In many cases, inbound inspections at yards reveal an unsafe condition due to the presence of lading

¹⁰ In most cases, UP train crews that pick up cars are not able to observe the loading or unloading practices or even see the conditions of the loading and unloading areas at the facility. Loading or unloading is often not occurring when train crews arrive to pick up cars. In addition, many of UP's customers have such large facilities that loading or unloading is conducted in a different location from where UP actually picks up the cars. At these facilities, the facility personnel or independent contractors are responsible for moving the cars from the loading or unloading areas to the track where they are released to UP. As a result, train crews may not be aware of the potential for residue contamination of a car's exterior. They must rely only on their inspection of the car itself.

residue on a car wheel or safety appliance. Unfortunately, sometimes UP stops cars only after an overspeed incident has occurred. In the case of an overspeed of four or more miles per hour, the Signal Department personnel who oversee the operation of the hump will get an overspeed alarm. If the reason for the overspeed is likely to be lading residue, the car and retarder will be inspected for residue.

Damage Prevention Services has created a process for cars that are set out at a yard as a result of product residue on car wheels or safety hazards, which I have attached as Exhibit 7 to my statement. We communicated this process broadly within UP so that Mechanical, Signal, Damage Prevention, Marketing, and National Customer Service Center personnel should all be working in concert. This process is designed to ensure that we correct an unsafe condition on a car and that we alert the customer of our concern so that the source of the condition can be identified and corrected.

The process provides that, when a car is stopped, the Mechanical or Signal department personnel will contact UP's Mechanical Bearing Desk to place the railcar on hold and prevent a car with an unsafe condition from continuing in transit. They then take digital photographs of the lading residue that is creating an unsafe condition. Damage Prevention Services personnel review these photographs and reach out to Marketing department personnel and/or directly to the customer. Finally, the photographs taken of the car are shared with customers, to show the unsafe conditions that caused UP concern. In addition, UP's communications to customers explain what needs to happen before the car is released and express our willingness to work with customers on identifying and solving potentially unsafe loading and unloading practices or conditions.

Damage Prevention Services has worked to educate UP personnel to follow the protocol that we have developed. If yard personnel fail to follow the process, we remind them of their responsibilities, reinforce the seriousness of the safety concern, and make sure that Damage Prevention Services field personnel follow up to confirm that corrective action is taken.

Before a car can continue in transit, the unsafe condition on the car must be remediated. In the case of lading residue, remediation usually just involves having the unsafe conditions cleaned off of the car. In cases of leaking cars, more substantial repairs or fixes might be needed: gaskets may need to be replaced, or bolts tightened. In either case, for cars stopped at UP's classification yards, UP alerts the customer and provides the information necessary for the customer to arrange for remediation. Customers can provide their own remediation if the car is set out at the origin. If no party can be determined to be responsible (for example, in the rare situation when a shipper and receiver blame each other and the source of the residue cannot be determined to be one or the other), UP has paid to have the car cleaned.

2. Not Relying Solely on Stopping Cars with Unsafe Conditions

It is unsafe to rely solely on inspections and setting out railcars that UP identifies as having product residue hazards. First and foremost, finding the source of the problem at a loading or unloading facility is the most straightforward, efficient, and effective solution. It will ensure that an unsafe car is not introduced into transit in the first place. UP crews will not need to take the time to switch out cars and delay trains by setting out or rejecting cars and turning them back to the customer to clean them. This would simply increase costs, delay cars, and disrupt operations.

Second, for a number of reasons, UP crews might not observe a condition that could later cause an accident, injury, damage, or disruption, although UP largely has been

successful at stopping and setting out these cars, as I explained above. In particular, loading failures can cause a car to leak after UP picks it up for movement; an inspector would not observe these loading failures, such as not fully tightening the manway bolts or improperly placing the manway gasket.

Even residue that is present on a car when the customer releases it is not necessarily readily apparent to train or yard crews inspecting the car. For example, tallow and some oils are clear when they are loaded; they may be essentially invisible (or look like ordinary moisture, which is not a problem) until they cool or dry and harden. Other substances are very dark and similarly could look like wet spots on car wheels or blend in with the car body. Still other products that cause overspeeds, like potato flakes and salt, become affixed to the car wheel along with mud and moisture.

Finally, even if UP personnel could always see and identify commodity residue, they are not in the best position to do so. As a general matter, residue will be more apparent to those who are used to dealing with the commodity and are aware of whether and how the loading or unloading process may have caused the commodity to accumulate on a car exterior. It is, after all, easier to see commodity residue if you know where it will be and what it will look like. The wide variety of commodities that UP transports, and the wide variety of commodities that can cause residue problems, make it difficult for all UP personnel to know what to look for. That is why if we know a particular customer is having a continuing specified problem that it is not addressing, we try to alert the train crew to the problem – then we may better be able to tell them what to look for.¹¹ Without taking a test sample, UP's inspectors cannot tell in many cases if

¹¹ As I explained above, train crews and yard crews often do not observe the actual loading or unloading practices and conditions at facilities that UP serves. Facilities are big enough that UP picks up the cars at a different location than where loading or unloading occurs.

wheels are just dirty with mud (which would dry or wash off and not interfere with hump operations) or has mud and salt, or mud and potato flakes, which could pose a safety hazard. The customer personnel involved in loading or unloading know if the car moved through a pool or pile of lading residue and not subsequently cleaned.

3. Working with Customers to Help Them Understand and Address Product Residue Issues

Since UP's focus is on preventing accidents caused by lading residue on car wheels or safety appliances, reaching out to customers is a central part of Damage Prevention Services efforts. In the last several years, Damage Prevention Services field personnel have made numerous visits to facilities that release cars with commodity residue problems. UP pays for these site visits out of its own Damage Prevention budget. Sometimes we arrange regular or seasonal visits. These site visits have revealed problems (as I described more fully above about the sources of product residue on car wheels and safety appliances). More importantly, as a result of these site visits and continued communications with our customers, together we have found solutions to remedy such problems.

Visits to loading and unloading facilities are successful because UP can focus attention on the problem. We can also bring our experience at other sites to bear. In addition, when UP visits customer facilities, we are usually able to work with the particular personnel who oversee or conduct the loading or unloading activities, or oversee the conditions of the plant. This can help isolate problematic conditions because UP's ordinary point of contact for the shipment is not usually the person who actually participates in the loading or unloading of the product in the car.

Some site visits have led to customers making rather significant changes to their facilities. For example, as I explained above and is shown in Exhibit 6, one UP customer,

{ }, recognized the deficiencies at their tallow loading facility in { }, Nebraska. They made upgrades to the track area, including new concrete slabs that were properly graded and new drains that were properly located to keep the track area dry and free of product. These improvements made regular maintenance of the facility significantly easier.

Other customers have changed their loading practices to reduce the likelihood of large spills from loading equipment. For example, we worked with one customer so that they no longer unnecessarily spill large amounts of product directly onto the outside of cars as the loading boom moves from one car to the next. We have pointed out to other customers that their placement of an uncapped loading boom in between loading cars caused product to regularly spill onto car truck assemblies.

Quite a few customers have made use of power washing equipment and instructed employees to wash car wheels and safety appliances before the car is released. Sometimes this is a temporary measure taken until larger improvements are possible; in other cases it is instituted as part of the customer's efforts to promote safety at every step along the way – avoid spilling, keep a clean facility, and clean the car. Power washing car wheels has helped reduce the number of overspeeds from some customers. For example, during 2010, we practically eliminated overspeeds of loaded industrial salt cars at Bailey Yard in North Platte, Nebraska, that originated from { }, Utah, after that facility began regularly using a power washer on the wheels of all cars that it released. Poor maintenance of the power washer led to an uptick of overspeeds in 2011, demonstrating that safety is an ongoing effort.

In addition to site visits and our work with particular customers to identify and solve particular problems, Damage Prevention Services has made general efforts to reach out and remind customers of the important effect loading and unloading conditions and practices have on

the safe, reliable, and damage-free transportation of their goods. As an example, I have attached as Exhibit 8 PowerPoint slides that were prepared in conjunction with a presentation to customers regarding lading residue on car wheels and safety appliances. Damage Prevention Services field personnel have given similar presentations to many customers. In addition, we regularly send AAR loading and unloading rules as helpful guidelines for our customers.

4. Customer Responses to UP's Concerns About Product Residue

On the whole, customers have been responsive to and supportive of UP's concerns about the safety hazards posed by product residue. The large majority of UP's customers rarely, if ever, release a car that would pose a problem. Those that do generally work to correct the problems because they recognize the role they can play in preventing accidents. No customer has ever said that UP categorically cannot stop a car and contact the customer because UP should have stopped the car earlier. In fact, the most common response to seeing the conditions that we photograph is to acknowledge a potential problem. As I explained above, Damage Prevention Services then has often worked with the customers to find a solution to the problem.

III. THE SUCCESS OF ITEM 200-B AT REDUCING THE SAFETY HAZARDS POSED BY LADING RESIDUE

As I have explained in this statement, UP has made considerable efforts and has created a broad reaching program to prevent accidents caused by lading residue on car wheels and safety appliances. Part of this program is Item 200-B of Tariff 6004-C. For several years prior to Item 200-B and its predecessors, Damage Prevention Services led UP's efforts to reach out to individual "problem" customers and address the source of problems. Most customers sought to address safety hazards that they were introducing at their loading and unloading facilities. As I described above, customers made improvements to their facilities and committed

to better maintenance of their facilities. They made sure that their loading and unloading personnel were aware of the importance of releasing cars to UP that were free of unsafe commodity residue on car wheels and safety appliances.

Unfortunately, despite UP's efforts, some customers remained non-responsive to the safety hazards posed by lading residue on car wheels and safety appliances. Item 200-B and its predecessors were designed to motivate change within these customers and remind all customers not to release an unsafe car for transit.

In conjunction with issuing Item 200-B, UP has communicated clearly to its customers the importance of releasing cars in a safe condition – free of lading residue on car wheels and safety appliances. In addition, through Item 200-B, UP has instituted a systematic process for stopping and setting out cars that are unsafe due to the presence of lading residue.

Finally, Item 200-B has provided an incentive that is necessary for the few customers who without a surcharge are not be responsive to UP's concerns. UP has not ever imposed the surcharge, though we have had many occasions to do so. However, the possibility of a surcharge has been an effective way to motivate customers to respond to safety concerns, which is UP's primary goal. UP would prefer never to impose a surcharge under Item 200-B.

IV. CONCLUSION

UP continues to seek ways to reduce safety hazards, make the railroad a safer place to work, reduce the possibility for damage to rail equipment and customer shipments, and reduce disruption to operations. In recent years, one way that UP has done this has been by focusing its efforts to prevent accidents caused by lading residue on car wheels and safety appliances. UP's initiatives focused on this problem have been working: customers have remedied unsafe situations at their facilities, and Item 200-B has played an important role in these successes.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief and information. Further, I certify that I am qualified and authorized to file this statement.

Executed on February 2, 2012.



Wayne L. Ronci

Exhibit 1

**Friction-Based Retarder at UP's Bailey Yard
in North Platte, Nebraska**

Photograph 1



Photograph 2



Exhibit 2

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Exhibit 3

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Exhibit 4

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Exhibit 5

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Exhibit 6

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Exhibit 7

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

Exhibit 8

**THIS EXHIBIT IS A HIGHLY
CONFIDENTIAL DOCUMENT**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42119

NORTH AMERICAN FREIGHT CAR ASSOCIATION
v.
UNION PACIFIC RAILROAD CO.

VERIFIED STATEMENT OF MARK S. BARNUM

My name is Mark S. Barnum, and I am the Senior Director of Operating Practices and Rules for Union Pacific Railroad Company ("UP"). I have held this position for nearly six years. In this capacity, my responsibilities include ensuring that UP's operating rules are in compliance with federal regulations and that department-specific rules are clear and consistent with rules adopted by other departments. I am also responsible for training management employees as well as train, engine, and yard employees regarding UP operating rules and regulatory compliance. Prior to my current position, I was the Director of Operating Practices, Rules, and Field Training Exercises. In addition to the roles within the Safety Department, I have held a variety of manager positions within the Operating Department and have been employed at UP for over 14 years. Before joining UP in 1997, I was the Assistant Director for Operations Training for Southern Pacific Railroad ("SP") where I was responsible for new hire training and continuing education. With my combined employment at UP and SP, I have worked in the railroad industry for almost 40 years.

I am submitting this statement in support of UP's reply argument and evidence regarding the reasonableness of its tariff rule requiring a shipper or receiver to remove lading residue from the exterior of the railcar and to ensure that the railcar is properly secured to

prevent leakage during transportation. I understand that this tariff is meant primarily to address the safety concerns associated with lading residue on railcar wheels and safety appliances.

Lading residue on railcar wheels, in particular, can interfere with the safe operation of retarders in UP's classification yards and can cause humped railcars to enter the classification bowl at excessive speeds ("overspeeds").

I also understand that the North American Freight Car Association ("NAFCA") has claimed that UP should detect any lading residue on railcar wheels when conducting pre-departure inspections pursuant to Federal Railroad Administration ("FRA") regulations, and therefore, if railcars with lading residue on wheels were reaching classification yards, UP crews were not conducting proper pre-departure inspections. Based on my experience, I disagree with NAFCA's claim. Crews conducting pre-departure inspections of railcars often will not be able to detect lading residue on railcar wheels for a variety of reasons. This statement provides an overview of the FRA required pre-departure inspection process and provides reasons why the pre-departure inspection process often will not detect lading residue on railcar wheels. Photographs showing how difficult it can be to detect lading residue on railcar wheels are attached as Exhibit 1 to my statement.

Pursuant to FRA regulations, a UP crew conducts a pre-departure inspection of each railcar placed in a train.¹ Before a train departs, a UP crew will walk both sides of the train and conduct a visual inspection of each railcar for imminently hazardous conditions, which are conditions likely to cause an accident or casualty during transportation.² While conducting pre-departure inspections, UP crews inspect for specific hazardous conditions listed in 49 C.F.R. Part

¹ 49 C.F.R. § 215.13.

² 49 C.F.R. Part 215, Appendix D.

215. Appendix D, such as dragging objects below a railcar, broken or missing safety appliances, and broken or extensively cracked wheels.³ In addition to inspecting for specific hazardous conditions, UP also inspects for any “other apparent safety hazard” likely to cause an accident or casualty during transportation.⁴ For example, UP inspects for and will reject railcars if metal bands, tarps, or nets used to secure the load are not properly attached to the railcar as an “other apparent safety hazard.” The scope of the regulation covers conditions that “are readily discoverable by a train crew in the course of a customary inspection.”

FRA regulations do not require UP crews to inspect specifically for the presence of lading residue on railcar wheels during the pre-departure inspection. While UP considers lading residue on railcar wheels to be a significant safety issue, lading residue on wheels may not be apparent to the UP crews conducting the pre-departure inspection for many reasons.

First, if lading residue is present on railcar wheels, it may not be apparent to UP crews conducting a visual inspection because of the lighting and weather conditions under which UP crews frequently inspect. UP operates 24 hours a day, 7 days a week and operates in 23 states with varying climates and weather patterns. The extent and nature of UP’s operations are such that UP crews frequently conduct pre-departure inspections at night with limited lighting and frequently conduct inspections under inclement weather conditions. When UP crews conduct pre-departure inspections in low light or in weather conditions producing precipitation, lading residue on railcar wheels may not be apparent. For example, if UP crews perform the pre-departure inspection while it is raining or snowing, the crew will not be able to differentiate between moisture on the wheel and lading residue on the wheel by a visual inspection alone.

³ *Id.* See Appendix D for a complete listing of specific hazardous conditions that UP inspects for while conducting pre-departure inspections.

⁴ *Id.*

Second, even under favorable lighting and weather conditions, lading residue may not be apparent because of the lading's characteristics and because of the wheel's physical appearance. Some commodities are difficult to detect because they are clear and are not otherwise apparent when present on railcar equipment. Railcar equipment is exposed to the elements during transportation and simply cannot be kept in a pristine condition.⁵ Consequently, railcar wheels can be discolored through exposure to the elements and can collect dirt and mud. Lading residue on discolored wheels and wheels that have collected dirt and mud may not be apparent to the UP crews conducting the pre-departure inspection because the lading residue may not be visible against the wheel's physical appearance. Moreover, if lading residue adheres to the back face of the wheel, it is even more difficult to detect.⁶ FRA regulations do not require crews to crawl under the railcar to inspect the back face of the wheel during a pre-departure inspection. The back face of a wheel can only be observed by looking across the railcar's undercarriage from the opposite side, which can be a distance of seven or eight feet, and other railcar equipment (such as the truck bolster or brake beam) can obstruct the view.⁷ It is very unlikely that UP crews could detect lading residue on the back face of the wheel while conducting the pre-departure inspection.

Third, wheels that have collected dirt or mud not contaminated with lading residue have not been known to create a safety hazard, but wheels that have collected mud contaminated with lading residue have created overspeeds in UP's classification yards. When

⁵ See Ex. 1, page 1 of 6.

⁶ The back face of wheels comes into contact with retarders, and therefore, lading residue on the back face of wheels can prevent the retarders from gripping the wheels and slowing the car. See *Ronci V.S.*, Ex. 1.

⁷ See Ex. 1, page 4 of 6.

mud is present on railcar wheels, UP crews will not be able to differentiate between mud contaminated with lading residue and mud not contaminated with lading residue through a visual inspection. Furthermore, UP crews may not know that the shipper's loading or unloading tracks are fouled with the lading because pre-departure inspections may not occur near the loading or unloading tracks. In that case, UP crews will not suspect that the railcar wheels collected mud contaminated with lading residue from the fouled loading or unloading tracks. The presence of mud on wheels will not alert UP crews to an apparent safety hazard.

Based on my experience and for the foregoing reasons, UP crews conducting pre-departure inspections of railcars often will be unable to detect lading residue on railcar wheels.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief and information. Further, I certify that I am qualified and authorized to file this statement.

Executed on February 3, 2012.

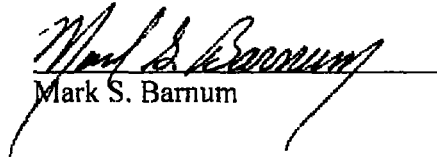

Mark S. Barnum

Exhibit 1

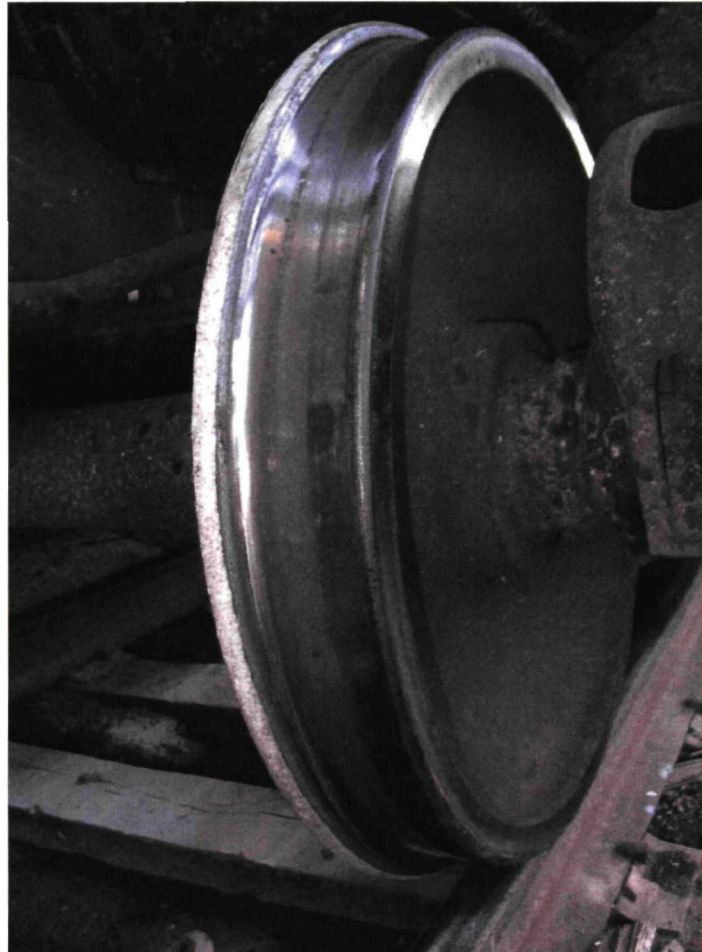
Examples of Cars Without Wheel Defects



Source: UP Train Inspection Instructional Video (UP004521)

**Examples of Wheels Made Unsafe Due to
the Presence of Lading Residue**

Tallow



Source: NAFCA - UP001638

Soybean Oil



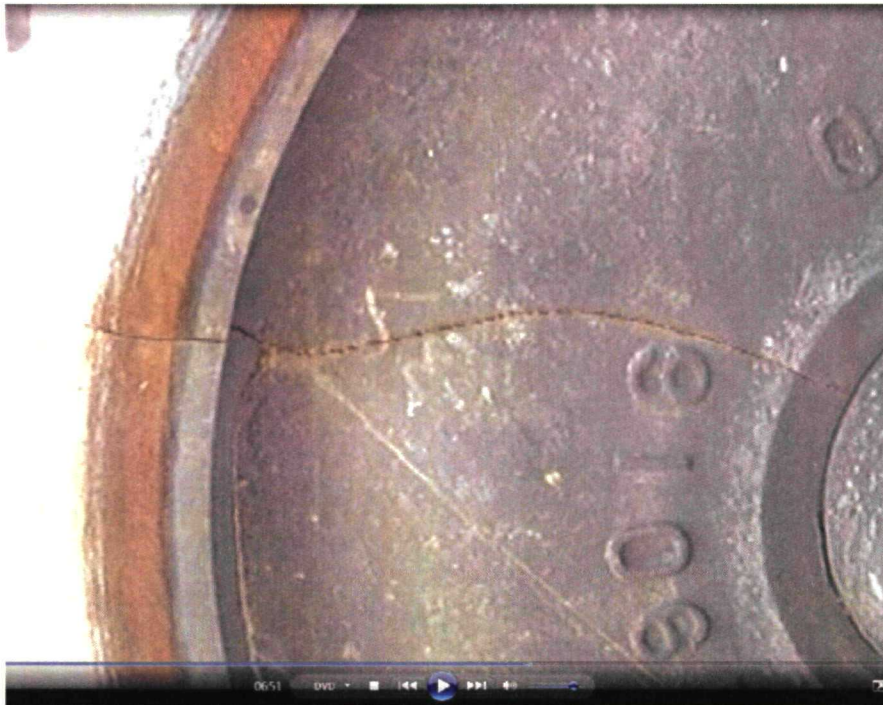
Source: NAFCA - UP001487 to 001544

Industrial Salt



Source: NAFCA - UP000949

Examples of Cracked Wheels



Source: UP Train Inspection Instructional Video (UP004521)

Example of Broken Wheel



Source: UP Train Inspection Instructional Video (UP004521)